

In the Matter of: )  
 )  
Application for )  
Certification for the ) Docket No. 98-AFC-4  
SUNRISE POWER PROJECT )  
 )

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Michal C. Moore, Presiding Member

Robert Pernell, Associate Member

STAFF PRESENT

Gary Fay, Hearing Officer

Ellen Townsend-Smith, Advisor to  
Commissioner Pernell

Caryn Holmes, Staff Counsel

Mark Pryor

Robert B. Haussler

Melissa Jones

Kisabuli

Dorothy Torres

Mark Hesters

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## P R O C E E D I N G S

9:30 a.m.

HEARING OFFICER FAY: Good morning.

This is an evidentiary hearing on the revision to the Sunrise Power Project. And at the request of both the staff and applicant the Committee plans to recess for approximately one hour so the parties can work on some issues that they wish to deal with in a workshop format.

And what I would like to do is ask counsel if she could inform the Hearing Officer when you're ready to go back on the record, and I will contact the Commissioners. And do you think that will be about an hour?

MS. HOLMES: It might be longer.

HEARING OFFICER FAY: All right, please keep me posted.

MS. HOLMES: I will.

HEARING OFFICER FAY: But it certainly won't be sooner than an hour, so we are recessed.

(Whereupon, at 9:30 a.m., the hearing was recessed, to reconvene at 1:10 p.m., this same day.)

--o0o--

1 AFTERNOON SESSION

2 1:10 p.m.

3 HEARING OFFICER FAY: We're back on the  
4 record. This is the evidentiary hearing for the  
5 revision to the Sunrise Power Project, formerly  
6 the Sunrise Cogeneration Power Project.

7 We've got a few preliminary matters to  
8 take care of. I'd like the parties to identify  
9 themselves, briefly, please. Applicant.

10 MR. GALATI: Scott Galati, on behalf of  
11 the applicant, Sunrise Power Company.

12 MR. GRATTAN: John Grattan, also for the  
13 applicant.

14 MS. HOLMES: Caryn Holmes, Staff  
15 Counsel.

16 MR. DeCUIR: Dennis DeCuir for the  
17 intervenor Transmission Agency of Northern  
18 California.

19 MS. POOLE: Kate Poole for CURE.

20 HEARING OFFICER FAY: Any other parties  
21 present? All right, I see no indication.

22 We would like to identify some exhibits  
23 initially and, Mr. Galati, you had requested that  
24 the amended, is it amended AFC?

25 MR. GALATI: Our amended AFC, and it was

1 docketed on 9/12/2000.

2 HEARING OFFICER FAY: So the amended AFC  
3 docketed on September 12, 2000 will be the next  
4 exhibit, which is 107. And we will identify as  
5 exhibit 108, the staff supplement for the -- the  
6 FSA supplement, rather, for the Sunrise Power  
7 Project. And that was dated October 26, 2000.  
8 And exhibit 109 will be the applicant's testimony  
9 dated November 2, 2000.

10 And I do not have filed testimony from  
11 CURE or from TANC, is that correct?

12 MR. DeCUIR: That's correct from TANC.

13 HEARING OFFICER FAY: Okay.

14 MS. POOLE: That is correct.

15 HEARING OFFICER FAY: All right. If  
16 there's other exhibits maybe we can just identify  
17 those as we go along, or do you need those  
18 identified immediately, Mr. Galati?

19 MR. GALATI: No, I think we're fine, we  
20 can proceed like this.

21 HEARING OFFICER FAY: Okay. Because the  
22 applicant did not number their testimony  
23 sequentially, I'd ask everybody to refer to the  
24 topic and then the page number, if there's a  
25 specific reference to exhibit 109.

1                   Then, in addition, we have a motion  
2       filed by staff for a continuance of the hearing on  
3       air quality issues. What is the status of that,  
4       Ms. Holmes?

5                   MS. HOLMES: I think we can let that one  
6       go at this point.

7                   HEARING OFFICER FAY: Okay, so you're  
8       withdrawing that motion?

9                   MS. HOLMES: Yes.

10                  HEARING OFFICER FAY: All right, just  
11       wanted to clarify that. I thought as much, but --  
12       okay.

13                  Based on a suggestion from Mr. Pryor I  
14       think I understand that noise and cultural, while  
15       the parties have reached agreement, at least the  
16       applicant and staff have reached agreement on  
17       this, that we do need to take some evidence on the  
18       nature of the agreement. And so I propose we move  
19       forward on that.

20                  We will be taking up biological  
21       resources at 1:30. We have a witness who will be  
22       in our conference call. And then we can progress  
23       as I indicated at the prehearing conference, in  
24       the order of the applicant's prehearing conference  
25       statement, subject to the needs of the parties.

1                   For instance, if one of the witnesses on  
2                   air quality is only available at a certain time,  
3                   we'll accommodate that.

4                   All right. I also was told that Mr.  
5                   DeCuir wishes to cross-examine the staff witness  
6                   on transmission line engineering, is that right?

7                   MR. DeCUIR: Yes, that's correct, Mr.  
8                   Fay. That would be witness --

9                   HEARING OFFICER FAY: Mark Hesters.

10                  MR. DeCUIR: -- Mark Hesters.

11                  HEARING OFFICER FAY: Okay. So when  
12                  that comes up we'll accord you that opportunity.

13                  All right, any concerns or comments  
14                  before we get started?

15                  Good, all right. Let's call the  
16                  applicant's witness on noise.

17                  MR. GALATI: I'd like to call Mr. Dave  
18                  Stein who has been previously sworn in this  
19                  matter.

20                  Whereupon,

21                                 DAVE STEIN  
22                  was recalled as a witness herein, and having been  
23                  previously duly sworn, was examined and testified  
24                  further as follows:

25                  //

1 DIRECT EXAMINATION

2 BY MR. GALATI:

3 Q Mr. Stein, if you could briefly identify  
4 yourself for the record.

5 A David Stein with URS Corporation.

6 Q And, Mr. Stein, did you prepare the  
7 supplemental testimony of David Stein on noise?

8 A Yes.

9 Q And does that testimony deal with  
10 modifications to the noise-6 condition and  
11 verification?

12 A Yes, it does.

13 MR. GALATI: I'd like that marked as  
14 110, please, it's the supplemental testimony of  
15 David Stein on noise dated November 6th and  
16 docketed on November 7th.

17 HEARING OFFICER FAY: All right, that  
18 will be exhibit 110. And do we have copies of  
19 that?

20 (Pause.)

21 HEARING OFFICER FAY: Proceed.

22 MR. GALATI: I don't think we have any  
23 further testimony other than to move that in and  
24 to see if staff agrees.

25 HEARING OFFICER FAY: Okay. All right,

1 let's move to staff on noise, or do you have  
2 cross-examination of the witness?

3 MS. HOLMES: No, I don't have any cross-  
4 examination.

5 HEARING OFFICER FAY: Any of the other  
6 parties have cross on this topic? All right.

7 Staff.

8 MS. HOLMES: Staff calls Kisabuli; he's  
9 already been sworn in this proceeding.

10 HEARING OFFICER FAY: Okay.

11 Whereupon,

12 KISABULI

13 was recalled as a witness herein, and having been  
14 previously duly sworn, was examined and testified  
15 further as follows:

16 DIRECT EXAMINATION

17 BY MS. HOLMES:

18 Q Mr. Kisabuli, do you have in front of  
19 you the exhibit that was just identified as  
20 exhibit 110?

21 A I do.

22 Q And were you responsible for preparing  
23 the noise portion of exhibit 108?

24 A Yes, I did.

25 Q Do you have any comments on the



1 applicant's proposed amendment to noise-6?

2 A We don't have any comments to make. We  
3 did look at what the applicant had suggested, and  
4 we did agree with the recommendations that they  
5 have on modifying Noise-6.

6 MS. HOLMES: Thank you. Those are all  
7 the questions I have.

8 HEARING OFFICER FAY: All right. Any  
9 cross?

10 MR. GALATI: No cross-examination.

11 HEARING OFFICER FAY: So basically the  
12 way you've resolved this is to put in the hands of  
13 the resident, that if he does not object then  
14 you'll proceed without the time restrictions?

15 MR. GALATI: Correct, along with a  
16 noticing requirement of 48 hours.

17 HEARING OFFICER FAY: Okay, all right,  
18 fine. Okay, good.

19 Any cross-examination of the staff  
20 witness? I see no indication. Thank you. That  
21 concludes the evidence on noise.

22 Let's go to cultural, please.

23 MS. HOLMES: I believe staff is the only  
24 party with a witness and we would call Gary  
25 Reinoehl and Dorothy Torres.

1                   I believe that Mr. Reinoehl needs to be  
2           sworn. I don't believe he's testified in this  
3           proceeding.

4                   HEARING OFFICER FAY: I believe you're  
5           right. Could the court reporter please swear the  
6           witness.  
7           Whereupon,

8                               GARY REINOEHL  
9           was called as a witness herein, and after first  
10          having been duly sworn, was examined and testified  
11          as follows:  
12          Whereupon,

13                              DOROTHY TORRES  
14          was recalled as a witness herein, and having been  
15          previously duly sworn, was examined and testified  
16          further as follows:

17                              DIRECT EXAMINATION

18          BY MS. HOLMES:

19               Q     Did the two of you prepare the cultural  
20          resources section of exhibit 108?

21                   MR. REINOEHL: Yes.

22                   MS. HOLMES: And is that testimony true  
23          and correct to the best of your knowledge?

24                   MR. REINOEHL: Yes, it is.

25                   MS. HOLMES: Do you have any changes or

1 modifications to that testimony at this time?

2 MR. REINOEHL: We proposed a change to  
3 cultural-1, and that was docketed today and  
4 distributed.

5 MS. HOLMES: Perhaps this would be a  
6 good time to have that marked as an exhibit.

7 HEARING OFFICER FAY: Okay, that will be  
8 exhibit 111.

9 BY MS. HOLMES:

10 Q Could you please summarize the contents  
11 of exhibit 111?

12 MR. REINOEHL: It requires a cultural  
13 resource specialist to be appointed with certain  
14 duties and background requirements, and also  
15 allows an alternate to be appointed if the  
16 applicant so chooses.

17 MS. HOLMES: Thank you. We have no  
18 further questions of these two witnesses.

19 HEARING OFFICER FAY: Does the applicant  
20 wish to cross-examine the witness?

21 MR. GALATI: No, we don't wish to cross-  
22 examine. We do not have a witness on this point,  
23 but we concur with the modifications to cultural-1  
24 in exhibit 111.

25 HEARING OFFICER FAY: And aside from

1       those modifications, do you concur with the FSA  
2       conditions?

3               MR. GALATI:  Yes, we do.  And our  
4       testimony in exhibit 109 concurs with those  
5       conditions.  There was one typo where we  
6       recommended changing -- we agreed with staff that  
7       cultural-18 should be deleted, which staff  
8       recommended.  But we accidentally typographically  
9       made it cultural-1.  So we'd make that  
10      modification.  But we agree with the FSA and we  
11      agree with exhibit 111.

12             HEARING OFFICER FAY:  Okay, thank you.  
13      Backtrack just a moment.  Do you also -- with the  
14      modification that you proposed for noise, do you  
15      concur with the FSA provisions on noise?

16             MR. GALATI:  Yes, we do.

17             HEARING OFFICER FAY:  Okay, thank you.  
18      All right.

19             Any cross-examination of the staff  
20      witness on cultural resources?  I see no  
21      indication.

22             Thank you, Ms. Holmes.

23             If we can I'd like to begin taking  
24      declarations.  It's a bit pro forma, but there are  
25      some, I think on a few topics there are some

1 unique features. So, we're just going to march  
2 right through using the applicant's prehearing  
3 conference statement as sort of the order of  
4 proceeding.

5 Mr. Galati, is that all right with you?

6 MR. GALATI: Except something that's not  
7 reflected in the prehearing conference statement,  
8 we have a topic on project ownership. And we  
9 submitted testimony separately as project  
10 ownership. I don't believe it was shown that way  
11 on the prehearing conference statement. I'd just  
12 like to take that --

13 HEARING OFFICER FAY: Okay, why don't we  
14 start with that. Why don't you move your  
15 testimony in on that.

16 MR. GALATI: That's right, that is  
17 exhibit number 109. It is identified as the  
18 testimony and declarations of Mervyn Soares and  
19 Lindel Blair on project ownership, docketed on  
20 November 2, 2000. We'd like to move that  
21 testimony into the record.

22 HEARING OFFICER FAY: Any objection?

23 MS. HOLMES: No objection.

24 HEARING OFFICER FAY: So moved.

25 MR. GALATI: Mr. Fay, we'd also like

1 marked for identification a document sponsored by  
2 those witnesses in that testimony. It is  
3 entitled, Notice of Change of Ownership" letter  
4 dated October 24, 2000, from Edison Mission Energy  
5 to the San Joaquin Valley Unified Air Pollution  
6 Control District. And that was docketed on  
7 October 25th. We'd like that marked and moved  
8 into evidence.

9 HEARING OFFICER FAY: We'll mark that  
10 exhibit 112.

11 MR. GALATI: That concludes the  
12 applicant's testimony and exhibits on project  
13 ownership.

14 HEARING OFFICER FAY: Okay. Does any  
15 other party have testimony on this topic? Okay, I  
16 see no indication.

17 So we'll move to project purpose and  
18 description.

19 MR. GALATI: Yes, Mr. Fay, the  
20 applicant's testimony package docketed on November  
21 2, 2000, also includes the testimony and  
22 declaration of Mervyn Soares on project  
23 description. That's a portion of exhibit 109 that  
24 we'd like moved into the record.

25 HEARING OFFICER FAY: Any objection to

1 receiving that? I see no indication. So moved.

2 MR. GALATI: There are two additional  
3 sets of documents that we'd like identified that  
4 are sponsored in the project description  
5 testimony.

6 The first is responses to California  
7 Energy Commission data request numbers 2, 3, 4 and  
8 6. That was docketed on October 6, 2000. If we  
9 could have that marked and moved into evidence.

10 HEARING OFFICER FAY: Could you repeat  
11 the data responses again?

12 MR. GALATI: Yes, it was responses to  
13 CEC data requests number 2, 3, 4 and 6.

14 HEARING OFFICER FAY: And those were  
15 docketed on which date?

16 MR. GALATI: October 6th.

17 HEARING OFFICER FAY: Okay, that will be  
18 exhibit 113.

19 MR. GALATI: The next document is  
20 entitled, also sponsored in the project  
21 description testimony, it's entitled "Errata,  
22 water collection and distribution system." That  
23 is docketed on October 26th. We'd like that  
24 marked and moved into the record.

25 HEARING OFFICER FAY: Okay, that will be

1 exhibit 114.

2 MR. GALATI: And, Mr. Fay, I will just  
3 move into the record the amended AFC at the  
4 conclusion of the hearings, once I have all the  
5 witnesses testify to it.

6 HEARING OFFICER FAY: That's fine.

7 MR. GALATI: Okay. So that concludes  
8 our testimony and exhibits on project description.

9 HEARING OFFICER FAY: Thank you. I  
10 heard a signal that I think indicates that our  
11 witness has called in on biological resources.  
12 I'm not sure how this works. Can we go off the  
13 record a minute, Debi?

14 (Off the record.)

15 HEARING OFFICER FAY: Do you have  
16 testimony on need conformance?

17 MR. GALATI: Yes, do you want to take  
18 staff's on project description, or continue?

19 HEARING OFFICER FAY: Does staff have  
20 testimony on project description?

21 MS. HOLMES: Staff has a project  
22 description portion of exhibit 108. It was  
23 prepared by Mr. Pryor. His qualifications and  
24 declaration are included in exhibit 108.

25 HEARING OFFICER FAY: Okay, any



1 objection to receiving that at this time? I hear  
2 none. So moved.

3 All right, thank you.

4 Need conformance.

5 MR. GALATI: Yes, we have testimony as  
6 part of exhibit 109, again docketed on November  
7 2nd. The testimony and declaration of Mervyn  
8 Soares. We'd like that moved into evidence at  
9 this point.

10 HEARING OFFICER FAY: Any objection?  
11 Hearing none, so moved.

12 MR. GALATI: That is all of our  
13 testimony and exhibits on demand conformance.

14 HEARING OFFICER FAY: Does the staff  
15 have any testimony on this topic?

16 MS. HOLMES: No.

17 HEARING OFFICER FAY: Okay. Does any  
18 other party? I hear no indication, so that  
19 concludes taking testimony on need conformance.

20 We'll move to project alternatives. Mr.  
21 Galati.

22 MR. GALATI: Yes, this also is part of  
23 exhibit 109, the testimony and declaration of  
24 Mervyn Soares, docketed on November 2nd. We'd  
25 like that moved into evidence.

1 HEARING OFFICER FAY: Any objection?

2 MS. HOLMES: No.

3 HEARING OFFICER FAY: Hearing none, so  
4 moved.

5 And I'd just like to remind the parties  
6 that we are going to be moving quickly through  
7 most of these topics. If you do have cross-  
8 examination, and for some reason I've skipped over  
9 you, please stand up and catch my attention. We  
10 certainly don't want to bypass anybody, but we do  
11 want to be able to finish today.

12 Staff, do you have testimony on  
13 alternatives?

14 MS. HOLMES: Staff has testimony on  
15 alternatives. It's the supplemental testimony of  
16 Eileen Allen beginning and ending on page 115 of  
17 exhibit 108.

18 HEARING OFFICER FAY: Thank you. Any  
19 objection to receiving that?

20 MR. GALATI: No objection.

21 HEARING OFFICER FAY: Okay, so moved.  
22 Moving to compliance and closure. Mr. Galati.

23 MR. GALATI: Actually we do not have any  
24 testimony on compliance and closure.

25 HEARING OFFICER FAY: Does staff have

1 testimony on that?

2 MS. HOLMES: We have several conditions  
3 including compliance monitoring and facility  
4 closure. That's also part of exhibit 108. It's  
5 on page 117 of that exhibit, and it's sponsored by  
6 Nancy Tronaas.

7 HEARING OFFICER FAY: Any objection to  
8 receiving that?

9 MR. GALATI: No objection.

10 HEARING OFFICER FAY: Okay, so moved.  
11 Facility design. Mr. Galati.

12 MR. GALATI: Yes, we have the testimony  
13 and declaration of Stanley Armbruster as part of  
14 exhibit 109 docketed on November 2nd. And we  
15 would like that moved into evidence.

16 HEARING OFFICER FAY: Any objection?  
17 Hearing none, so moved.

18 Does the staff have testimony on  
19 facility design?

20 MS. HOLMES: Staff has testimony in  
21 exhibit 108, beginning on page 105. It's  
22 sponsored by Steve Baker, Kisabuli and Al McCuen.

23 HEARING OFFICER FAY: Any objection to  
24 receiving that?

25 MR. GALATI: No objection.

1 HEARING OFFICER FAY: Okay, so moved.  
2 Power plant reliability and efficiency. Mr.  
3 Galati.

4 MR. GALATI: We have the testimony and  
5 declaration of Stanley Armbruster, also docketed  
6 as part of exhibit 109, docketed on November 2nd.  
7 We'd like that moved into evidence, as well.

8 HEARING OFFICER FAY: Any objection?  
9 Hearing none, so moved. Ms. Holmes.

10 MS. HOLMES: Staff has testimony, it's  
11 in separate sections of exhibit 108. Reliability  
12 is sponsored by Steve Baker and it begins on page  
13 109. And efficiency is also the testimony of  
14 Steve Baker. It begins on page 111 of exhibit  
15 108.

16 HEARING OFFICER FAY: Okay. Any  
17 objection to receiving that at this time?

18 MR. GALATI: None.

19 HEARING OFFICER FAY: Hearing none, so  
20 moved. Transmission system engineering. Mr.  
21 Galati.

22 MR. GALATI: We have no additional  
23 testimony on transmission system engineering.

24 HEARING OFFICER FAY: Okay. Ms. Holmes.

25 MS. HOLMES: Staff has testimony on

1 transmission system engineering. It's in exhibit  
2 108 beginning on page 113, and it's sponsored by  
3 Mark Hesters.

4 HEARING OFFICER FAY: Could you call Mr.  
5 Hesters, please.

6 Mr. Hesters, we'll remind you that  
7 you've been previously sworn in this proceeding  
8 and you remain under oath.

9 DIRECT EXAMINATION

10 BY MS. HOLMES:

11 Q Mr. Hesters, did you prepare that  
12 section of exhibit 108 that begins on page 113  
13 that's designated transmission system engineering?

14 A I did.

15 Q Is it valid and correct to the best of  
16 your knowledge?

17 A Yes.

18 MS. HOLMES: Mr. Hesters is available  
19 for cross-examination.

20 MS. DANIELS: Hello?

21 HEARING OFFICER FAY: Hello, Ms.  
22 Daniels?

23 MS. DANIELS: Yes.

24 HEARING OFFICER FAY: This is Gary Fay;  
25 I'm the Hearing Officer in the Sunrise case. And

1 if you can stand by we're right in the middle of  
2 taking testimony on a different topic. And as  
3 soon as we conclude this we'll move right into  
4 biological resources. Is that all right?

5 MS. DANIELS: That sounds fine.

6 HEARING OFFICER FAY: Okay. All right,  
7 Mr. Hesters, any direct testimony?

8 MS. HOLMES: I thought we had just  
9 concluded that.

10 HEARING OFFICER FAY: All right. Okay.  
11 Then, Mr. Galati, any cross of this witness?

12 MR. GALATI: No cross.

13 HEARING OFFICER FAY: Okay, Mr. DeCuir?

14 MR. DeCUIR: Thank you, Mr. Fay. Dennis  
15 DeCuir for the Transmission Agency of Northern  
16 California.

17 DIRECT EXAMINATION

18 BY MR. DeCUIR:

19 Q Mr. Hesters, on page 113 of the  
20 supplement, the staff supplement, you indicate  
21 that the impacts of the amended project are the  
22 same as described in the existing system impact  
23 study.

24 Do you see that, where you say that?

25 A I do.

1           Q     And you reviewed the system impact  
2 study, did you?

3           A     The original one, yes.

4           Q     And is it your professional judgment  
5 that the system impact study is correct  
6 electrically?

7           A     It's going to be slightly different, but  
8 it should, for the purposes of defining the need  
9 for downstream facilities be adequate.

10          Q     And in what instance would you, for  
11 example, -- tell us how it would be slightly  
12 different.

13          A     This project is slightly smaller than  
14 the proposed projects that we, I guess, that I  
15 testified about, I can't remember the month, but  
16 it feels like it was about a year ago.

17          Q     And is it the case that you examined the  
18 system impact study to see that it was in all  
19 respects a proper study, one that the Commission  
20 could rely upon if it were to issue what is  
21 requested here?

22          A     In conjunction with the ISO, yes, I did.

23          Q     And is it your professional judgment  
24 that there is no need for downstream facilities?

25          A     Beyond the conductors, which we

1 generally look at as we look at them -- what's --  
2 the phrasing that I always use is they're within  
3 the fenceline, and therefore don't require any  
4 further analysis beyond the need for conductors.  
5 We find that Sunrise does not have any other  
6 effects.

7 Q You testified here that the project  
8 would be required to participate in an existing  
9 remedial action scheme.

10 A Yes.

11 Q Is that your current understanding?

12 A Yes.

13 Q Is there a remedial action scheme that  
14 applies to this project?

15 A It's either being developed or current.  
16 Part of what they're going to need to do to be  
17 interconnected to the PG&E system is get a full-on  
18 interconnection agreement or facilities agreement  
19 with the Cal-ISO and PG&E.

20 Based on the ISO's testimony and  
21 analysis, that will not occur without having  
22 something that protects the, I think it's the --  
23 trying to remember what it is -- it's the 230 to  
24 500 kV transformers at Midway.

25 The expectation is that will be a



1 remedial action scheme and a remedial action  
2 scheme will protect those facilities.

3 Q How will --

4 PRESIDING MEMBER MOORE: Excuse me, Mr.  
5 Hesters, could you speak a little more closely  
6 into the mike, just an inch or two away from your  
7 mouth, please.

8 BY MR. DeCUIR:

9 Q So when you spoke a few moments ago to  
10 the effect that there is an existing remedial  
11 action scheme for this project you were misspoken,  
12 or you had misspoken, is that correct?

13 A I guess you could say technically yes,  
14 but the expectation and statements are correct, in  
15 that they will be participating in a remedial  
16 action scheme, and will be required to participate  
17 in that in order to interconnect.

18 Q Just so that we're clear here, you are  
19 now saying that there is no existing remedial  
20 action scheme that applies to this project, isn't  
21 that right?

22 A Not one that I've directly seen, but  
23 there may be one that exists because a remedial  
24 action scheme was being developed for the LaPaloma  
25 Project that had the same problems as the Sunrise

1 Project.

2 And if that remedial action scheme  
3 exists, then the same remedial action scheme would  
4 apply to Sunrise.

5 Q When you testified it seems like it was  
6 almost a year ago, maybe I'm mistaken about the  
7 passage of the time, but when you testified before  
8 in this project it seemed to be your opinion that  
9 congestion through the Midway path, that is of  
10 concern to the members of the Transmission Agency,  
11 should not be a concern because it was your  
12 judgment that north of Midway there was more than  
13 adequate generation available that the  
14 Transmission Agency's members could purchase when  
15 they would be foreclosed by the construction and  
16 operation of this project because it requires a  
17 pathway through Midway.

18 Is that the substance?

19 A That's not exactly what I said. That's  
20 close, but not quite.

21 Q Okay, please tell us how it differs?

22 A It differs in that whether or not the  
23 TANC members, using path 15, or Sunrise uses path  
24 15, does not have any effect on the resources  
25 available to northern California. 300 megawatts

1 or 320 megawatts used by TANC or used to send  
2 Sunrise north is 300 megawatts flowing north.

3 Q And through the course of this last year  
4 did it come to your attention that generation  
5 north of Midway is wholly inadequate for the needs  
6 of the loads in that area that includes the areas  
7 in which the Transmission Agency members are  
8 located?

9 MS. HOLMES: I'm going to object to that  
10 question on the grounds that it states facts that  
11 are not in evidence.

12 HEARING OFFICER FAY: Any response, Mr.  
13 DeCuir?

14 MR. DeCUIR: Well, I'm cross-examining  
15 him; I'm asking if it came to his attention. He  
16 can answer yes or no.

17 HEARING OFFICER FAY: I'm going to  
18 direct that the witness answer the question.

19 MR. HESTERS: I don't see how that's  
20 relevant because if Sunrise sends power north, or  
21 TANC sends power north, it's the same amount of  
22 power.

23 PRESIDING MEMBER MOORE: Wait a second,  
24 Mr. Hesters, what he asked you was had it come to  
25 your attention. So were you aware of a discussion

1 on that?

2 MR. HESTERS: Yes, in some areas, at  
3 some times we were short of power in northern  
4 California.

5 BY MR. DeCUIR:

6 Q Mr. Hesters, when you come to your  
7 conclusion that there is a distinction here that I  
8 didn't recognize when I tried to recapture your  
9 testimony, is your conclusion based on your  
10 professional engineering judgment?

11 A Actually it's based on my experience as  
12 a planner, that I spent eight years in the  
13 electricity resource planning office, which is now  
14 the electricity assessments office, analyzing the  
15 system effects of new power plants and policies.

16 HEARING OFFICER FAY: Mr. Hesters,  
17 again, we need you right into the mike.

18 MR. HESTERS: I'm sorry.

19 BY MR. DeCUIR:

20 Q Mr. Hesters, it's a fact, isn't it, that  
21 you have no formal electrical engineering  
22 education whatsoever?

23 MR. GALATI: Mr. Fay, I'd like to object  
24 at this point. We are going beyond the scope of  
25 cross-examination on transmission system

1       engineering of the refined project. We're now  
2       rehashing issues that were adjudicated in the last  
3       hearing. There is no direct testimony available  
4       for TANC on this amended project. And we're just  
5       going back to qualifications of Mr. Hesters.

6               HEARING OFFICER FAY: Yeah, I'm going to  
7       sustain that objection, Mr. DeCuir. Let's move  
8       along.

9               MR. DeCUIR: I'm going to conclude my  
10      questions because I think the record is very  
11      clear. We just had questions in which he  
12      testified as to his professional engineering  
13      judgment on two subjects, at least.

14              I would like to proceed, but if that's  
15      the ruling I will have to sit down, and thank you  
16      for the opportunity to participate.

17              HEARING OFFICER FAY: Okay.

18              MR. DeCUIR: All right, thank you.

19              HEARING OFFICER FAY: Thank you. Any  
20      other party wish to cross-examine the witness?  
21      Any redirect, Ms. Holmes?

22              MS. HOLMES: None.

23              HEARING OFFICER FAY: Okay. At this  
24      time I'd like to move to biological resources.  
25      Mr. Hesters, thank you, you're excused.

1 Ms. Daniels, are you still with us?

2 MS. DANIELS: I'm still here.

3 HEARING OFFICER FAY: Good.

4 (Pause.)

5 MR. DeCUIR: If I could just interject,  
6 I'd suggest --

7 PRESIDING MEMBER MOORE: Sorry, I didn't  
8 see you standing there still. Go ahead.

9 MR. DeCUIR: I'm sorry. I just wanted  
10 to suggest to staff that they move the  
11 introduction of Mr. Hesters' testimony. It's just  
12 a matter of personal convenience because I was  
13 told by Counsel Holmes that they intended to wait  
14 for all of the evidence to be received, and I  
15 wanted to save my clients some money waiting  
16 around here.

17 HEARING OFFICER FAY: Do you have any  
18 objection to that, Ms. Holmes? Can we just go  
19 ahead and --

20 MS. HOLMES: You want me to move the  
21 transmission system engineering portion of exhibit  
22 108 in separately?

23 MR. DeCUIR: At this time.

24 MS. HOLMES: Okay. So moved.

25 HEARING OFFICER FAY: All right, and is

1       there objection to that?

2               MR. GALATI:  No objection.

3               MR. DeCUIR:  Objection.  And I would  
4       like to base the objection on the testimony that  
5       we've just heard from the witness.  He's not  
6       indicated a basis for his conclusions and then his  
7       education.

8               HEARING OFFICER FAY:  Okay, your  
9       objection is noted.

10              MR. DeCUIR:  Thank you.

11              HEARING OFFICER FAY:  All right.  Okay,  
12       we're taking evidence on biological resources.  
13       Mr. Galati.

14              MR. GALATI:  Yes, thank you, Mr. Fay.  
15       I'd like to call, who's been previously sworn, Mr.  
16       Bill Vanherweg.  
17       Whereupon,

18                      BILL VANHERWEG  
19       was recalled as a witness herein, and having been  
20       previously duly sworn, was examined and testified  
21       further as follows:

22                      DIRECT EXAMINATION

23       BY MR. GALATI:

24               Q     Mr. Vanherweg, did you prepare the  
25       biological resources testimony of the applicant

1 which was docketed on November 2nd, that portion  
2 of exhibit 109 entitled, biological resources?

3 A Yes, I did.

4 Q Does that testimony represent your best  
5 professional judgment?

6 A Yes, it does.

7 Q Mr. Vanherweg, did you also assist in  
8 responding to staff data request number 6  
9 concerning biological resources?

10 A Yes, I did.

11 MR. GALATI: Mr. Fay, could I have that  
12 response to CEC data request number 6, docketed on  
13 October 6, 2000, marked?

14 HEARING OFFICER FAY: All right, that  
15 will be exhibit 115.

16 BY MR. GALATI:

17 Q Mr. Vanherweg, did you conclude that the  
18 amended project, including the new gas pipeline  
19 and the relocation of the two water lines from  
20 West Kern Water District would not result in  
21 significant impacts to biological resources?

22 A Yes, I did.

23 Q Did you also conclude that the amended  
24 project, including those two features, would  
25 comply with all applicable LORS to your knowledge



1 in biological resources?

2 A Yes, I did.

3 Q And, Mr. Vanherweg, did you review the  
4 final staff assessment on biological resources?

5 A Yes, I did. And I did agree with the  
6 conclusions in the FSA, with the exception of the  
7 inflexibility of some of the verification times.

8 Verification of BIO-1, BIO-7, BIO-8,  
9 BIO-9 and BIO-12, I feel that it's critical to  
10 have some flexibility incorporated into these  
11 verification times for biological submittals in  
12 order for the project to meet its accelerated  
13 construction schedule.

14 Q And have you proposed modifications to  
15 those biological conditions that you just  
16 referenced, including the verifications?

17 A Yes, I did -- to address those --

18 Q You recommended a change to new  
19 condition BIO-12 regarding bird flight diverters.  
20 Is it your understanding now that the applicant  
21 has withdrawn that portion of the testimony?

22 A Oh, yes.

23 Q So you're no longer recommending changes  
24 to BIO-12?

25 A I am not.

1                   MR. GALATI: Mr. Vanherweg is available  
2                   for cross-examination. I would like to move into  
3                   the record a portion of exhibit 109, testimony and  
4                   declaration of William J. Vanherweg, as well as  
5                   exhibit 115.

6                   HEARING OFFICER FAY: Any objection to  
7                   moving that in at this time? All right, so moved.

8                   Mr. Vanherweg, before we get started, I  
9                   just want to clarify, your disagreement with  
10                  verification times includes, and correct me if I'm  
11                  wrong, verification to condition 1, 7, 8, 9 and  
12                  12, is that correct?

13                  MR. VANHERWEG: One, 7, 8 and 9; we  
14                  withdrew 12.

15                  HEARING OFFICER FAY: All right, so all  
16                  your objections to condition 12 have been  
17                  withdrawn?

18                  MR. VANHERWEG: Yes.

19                  HEARING OFFICER FAY: Okay. Thank you.  
20                  Staff, any cross-examination of the witness?

21                  MS. HOLMES: No.

22                  HEARING OFFICER FAY: Okay. Then let's  
23                  move to the staff testimony.

24                  MS. HOLMES: Staff's witness on biology  
25                  is Rick York. He's already been sworn.

1       Whereupon,

2                               RICK YORK

3       was recalled as a witness herein, and having been  
4       previously duly sworn, was examined and testified  
5       further as follows:

6                               DIRECT EXAMINATION

7       BY MS. HOLMES:

8               Q     Mr. York, did you prepare the biological  
9       resources section of exhibit 108?

10            A     Yes, I did.

11            Q     Do you have any changes or corrections  
12       to your testimony?

13            A     No, I do not.

14            Q     Is the testimony true and valid to the  
15       best of your knowledge?

16            A     Yes, it is.

17            Q     Were you present at the prehearing  
18       conference I believe it was last week where the  
19       issue of the price of bird flight diverters was  
20       discussed?

21            A     Yes, I was there.

22            Q     Could you briefly summarize what you've  
23       learned about that subject?

24            A     Yes. I believe Commissioner Moore asked  
25       for some information about price of bird flight

1       diverters.

2               Contacted two different consultants. As  
3       of this morning I learned that if this project  
4       needs to buy several thousand bird flight  
5       diverters, if they're installed every 15 feet on  
6       the ground wire, and that's manufacturer's specs,  
7       that the price is \$6.50 per bird flight diverter.

8               I actually brought a picture of what  
9       they look like if you want to --

10              MS. HOLMES: Perhaps we can have that  
11       marked if that's of interest.

12              MR. YORK: Yes, we can do that.

13              PRESIDING MEMBER MOORE: Why don't we --

14              HEARING OFFICER FAY: Yes, let's mark  
15       that. That will be exhibit 116.

16       BY MS. HOLMES:

17              Q     Can you briefly describe what's in  
18       exhibit 116 so that the record will show what it  
19       is a picture of?

20              A     It's a photograph of, I assume, ground  
21       wires with bird flight diverters installed on  
22       them, you know, at equal intervals. And a close-  
23       up of what a bird flight diverter looks like.

24              It's from the Kaddas Enterprises  
25       website. They are the group that we have

1       contacted.

2               PRESIDING MEMBER MOORE: Did they give  
3       you an estimate, a manufacturer's estimate of what  
4       they think the time involved to put one of the --  
5       the time and energy to put one up, or --

6               MR. YORK: No. No, actually there's a  
7       couple different ways to install them. You can  
8       install them by helicopter or you can -- yeah,  
9       that would be a wild ride -- or you can install  
10      them from the ground from a crane or a basket.

11              And that affects the overall cost of  
12      installing these.

13              What we have learned is that the cost  
14      per diverter is \$6.50 per.

15              PRESIDING MEMBER MOORE: So, for  
16      existing facilities, and clearly in the case of  
17      new facilities --

18              MR. YORK: They're always installed on  
19      existing --

20              PRESIDING MEMBER MOORE: -- four dots  
21      per inch or something?

22              MR. YORK: Pardon?

23              PRESIDING MEMBER MOORE: Four dots per  
24      inch?

25              (Laughter.)

1                   MR. YORK: I have to enlarge that, yeah.  
2                   Yeah, they're installed on lines that are already  
3                   up. You do not install these on the ground wire  
4                   when it's rolled up on the ground, or on a spool.

5                   PRESIDING MEMBER MOORE: But I'm just  
6                   saying, clearly in the case of putting up a new  
7                   facility, putting them up as a function of the new  
8                   operation is pretty straightforward.

9                   Then you've got just the marginal costs  
10                  of the units. But --

11                  MR. YORK: Plus -- well, I think the  
12                  actual, to be totally accurate about the price,  
13                  the big expense is the labor involved in  
14                  installing it.

15                  PRESIDING MEMBER MOORE: Absolutely.

16                  MR. YORK: For 25 miles I calculate the  
17                  cost for the bird flight diverters, alone, is  
18                  about \$57,000 for 25 miles, installed every 15  
19                  feet.

20                  PRESIDING MEMBER MOORE: Plus labor  
21                  after that --

22                  MR. YORK: Plus labor. And that's what  
23                  the applicant and their installer will work out.  
24                  I could not get --

25                  PRESIDING MEMBER MOORE: And that

1 assumes an average span of how far?

2 MR. YORK: Installed every 15 feet.

3 PRESIDING MEMBER MOORE: No, I meant  
4 average span between towers.

5 MR. YORK: I have no idea what --

6 PRESIDING MEMBER MOORE: Okay. Thank  
7 you.

8 HEARING OFFICER FAY: And, Mr. York,  
9 could you just describe, perhaps more clearly than  
10 your photograph, --

11 (Laughter.)

12 HEARING OFFICER FAY: -- if one were  
13 close to this, what does it look like?

14 MR. YORK: Looks like a ping-pong paddle  
15 to me.

16 HEARING OFFICER FAY: All right. Is  
17 that what the inset is in your photo?

18 MR. YORK: Yes, that's the --

19 HEARING OFFICER FAY: A close-up of  
20 the --

21 MR. YORK: -- enlargement of the  
22 enlargement is -- I apologize for the --

23 HEARING OFFICER FAY: So this is a ping-  
24 pong paddle that has a reflective surface, does  
25 it?

1                   MR. YORK: No. They come in four  
2                   colors. Not going to talk about what color --  
3                   actually what's recommended is just the black one.  
4                   It comes in red, white and black, and the fourth  
5                   color is something that's fluorescent that's  
6                   visible at night. That's not something that would  
7                   be necessary for dealing with condors and large  
8                   birds of prey. They tend to not be flying around  
9                   at night. This is clearly a daytime, early  
10                  morning and evening device.

11                  We've been advised that the black is the  
12                  one that holds up the best.

13                  HEARING OFFICER FAY: And does this move  
14                  in the wind and --

15                  MR. YORK: Yeah, any kind of breeze  
16                  makes it move in the breeze.

17                  HEARING OFFICER FAY: All right.  
18                  Proceed.

19                  BY MS. HOLMES:

20                  Q     Mr. York, were you here earlier this  
21                  morning when there was a discussion about the  
22                  planning and the verifications for BIO-1, 7 and 9?

23                  A     Yes.

24                  Q     Do you have a brief response to why you  
25                  think that the time limits in your testimony are



1 reasonable?

2 A It's my preference that the verification  
3 timeframes that are in my conditions be left as  
4 is. If we cut the timeframes as the applicant has  
5 requested here, that could shorten the time  
6 available to agencies such as Fish and Wildlife  
7 Service and Fish and Game to work on these  
8 submittals.

9 We don't have any control over those  
10 other agencies. We ask them to provide comments  
11 on these things, these documents, like the  
12 mitigation monitoring plan. And they work on them  
13 as they can fit them into their busy work  
14 schedules.

15 So, it's my preference to leave the  
16 timeframes as is.

17 I'd like to provide you a little update  
18 on those four conditions that they are requesting.  
19 BIO-1 is just a matter of the applicant addressing  
20 all the proposed mitigation that they have in  
21 their AFC.

22 That is rolled into BIO-9 which is the  
23 mitigation and monitoring plan. I believe they've  
24 already done that. We have a meeting with the  
25 Fish and Wildlife Service next Tuesday to give

1       them what I would like to believe is our final  
2       comments on their mitigation monitoring plan.

3               So they are moving forward. They are  
4       very motivated to get this done, and we are trying  
5       to work with them on their schedule.

6               The incidental take permit from Fish and  
7       Game, as you know, Donna Daniels is on the phone.  
8       She can talk a little bit more about this. But I  
9       talked to Donna this morning. She's working on  
10      the incidental take permit. They intend to  
11      provide that to the applicant soon after the  
12      decision is made for this project. I believe she  
13      will state that for the record, today. So that  
14      also is being worked out.

15              And BIO-8 deals with the biological  
16      opinion from the Fish and Wildlife Service. The  
17      applicant has received the biological opinion. We  
18      received it this morning. I believe the applicant  
19      received it last Friday.

20              That is a large chunk of information  
21      that will be incorporated directly into the  
22      mitigation and monitoring plan.

23              So, these four conditions are being  
24      addressed by the applicant. They are working very  
25      hard on them. We are, in turn, taking what we

1       need as our time to help them get these things  
2       finalized.

3               And it's my preference to leave the  
4       timeframes as is, and that we all just work as  
5       closely as we can with the applicant to get these  
6       things final so they can begin construction as  
7       soon as they would like.

8               Q     Does that conclude your testimony?

9               A     Yes.

10              MS. HOLMES:  Mr. York's available for  
11     cross-examination.

12              HEARING OFFICER FAY:  Thank you.  Any  
13     cross?

14              MR. GALATI:  Yes, I do have some cross-  
15     examination.

16                               CROSS-EXAMINATION

17     BY MR. GALATI:

18              Q     Mr. York, I'd like to point you to the  
19     verification of BIO-1.  Currently, the beginning  
20     of that verification says at least 60 days prior  
21     to the start of any project-related ground  
22     disturbance activities, is that correct?

23              A     Yes, it is.

24              Q     That condition and verification requires  
25     the submittal of the biological resources

1 mitigation implementation and monitoring, correct?

2 A Yes, it refers to BIO-9, BIO-1 and BIO-  
3 9.

4 Q If the applicant were to begin  
5 construction in mid December, it's impossible for  
6 the applicant to comply with that condition, isn't  
7 it?

8 A It would be difficult for you to comply  
9 with the timeframes. It should not be difficult  
10 for you to provide a final document so you can  
11 begin construction.

12 Q Correct, thank you. It would be  
13 actually physically impossible for us, even if we  
14 had a BRIMP today that was completed, to be able  
15 to provide it at least 60 days prior to ground  
16 disturbance?

17 A That's correct.

18 Q On BIO-7, verification for BIO-7 says,  
19 no less than five days prior to the start of any  
20 project-related ground disturbance activity it  
21 requires the project owner shall submit to the CPM  
22 a copy of the final CDFG incidental take permit.

23 It further goes on to say that the  
24 permit terms and conditions will be incorporated  
25 into the BRIMP. Do you see that at BIO-7?

1           A     Very familiar with BIO-7, yes.

2           Q     Okay.  If the applicant were to --  
3       excuse me, if CDFG were to issue the incidental  
4       take permit on the day after the Commission  
5       decision, does this verification prevent the  
6       project from constructing within five days of  
7       issuing of that incidental take permit?

8           A     I guess it would.

9           Q     On BIO-8, --

10          A     I would like to state that we can have,  
11       I'd prefer to have Donna Daniels interject her  
12       comments about what she thinks the timing may be  
13       for the incidental take permit.

14               MR. GALATI:  That would be okay with me.  
15       I don't mind interrupting the cross at this point.  
16       We can get some information about that right now.

17               HEARING OFFICER FAY:  All right.  Ms.  
18       Daniels, --

19               MS. DANIELS:  Yes.

20               HEARING OFFICER FAY:  -- did you hear  
21       that exchange?

22               MS. DANIELS:  I can barely hear it.  I  
23       think you wanted me to talk about the timing on  
24       the 2081, is that correct?

25               MR. GALATI:  I believe that BIO-7 does

1 involve information about section 2081(b).

2 MS. DANIELS: Um-hum.

3 MR. GALATI: The incidental take permit.

4 MS. DANIELS: And you wanted to know the  
5 timing?

6 HEARING OFFICER FAY: Mr. Galati, would  
7 you like to ask her the question?

8 MR. GALATI: Yes. Thank you.

9 Ms. Daniels, this is Scott Galati  
10 representing the applicant.

11 MS. DANIELS: Hi.

12 MR. GALATI: I wanted to ask you what  
13 the status is, when do you think the incidental  
14 take permit for the Sunrise Project could be  
15 issued?

16 MS. DANIELS: I'm not sure how long it  
17 will take. It should be off my desk within the  
18 next day or two. I'm awaiting just a little bit  
19 more clarification on a couple, a little bit of  
20 the site description.

21 And everyone in our department that has  
22 to review it knows that it's a rush, and we're  
23 really hoping to have it out by early December.

24 MR. GALATI: Can it be issued prior to  
25 the Commission decision?

1 MS. DANIELS: I'm sorry?

2 MR. GALATI: Can CDFG issue the  
3 incidental take permit prior to the Commission's  
4 final decision on the project?

5 MS. DANIELS: No.

6 MR. GALATI: I don't have any further  
7 questions for Ms. Daniels.

8 HEARING OFFICER FAY: Okay, thank you,  
9 Ms. Daniels. Go ahead, Ms. Holmes, anything  
10 further?

11 MR. GALATI: Actually, that was still my  
12 cross-examination.

13 MS. HOLMES: Do I get to cross my own  
14 witness?

15 HEARING OFFICER FAY: All right, Mr.  
16 Galati's not through yet.

17 MR. GALATI: If it would help me.

18 (Laughter.)

19 CROSS-EXAMINATION - Resumed

20 BY MR. GALATI:

21 Q So now that Ms. Daniels has told us that  
22 the incidental take permit cannot be issued till  
23 after the Commission decision, the verification of  
24 BIO-7, even assuming let's say a one-day  
25 turnaround, the project could not begin

1 construction till at least five days after the  
2 Commission made its decision, and at least five  
3 days after the incidental take permit was issued?

4 If the incidental take permit was issued  
5 the day after the Commission decision, and it was  
6 provided to you, and you were able to review it.  
7 And you had no comments or questions, the project  
8 still would not be able to do any construction on  
9 the project till five days after the incidental  
10 take permit?

11 A I'm not going to agree to that, you  
12 know, today. I think that we need to take that up  
13 with the compliance project manager.

14 Q But the condition says, at least five  
15 days prior?

16 A I don't think that precludes you from  
17 starting construction if we have the incidental  
18 take permit. Some of these projects do cut it  
19 very close. And we've been able to work with  
20 applicants to make sure that agencies are  
21 comfortable with proceeding with work, even if  
22 you're within the timeframe. In other words, not  
23 before, but into that timeframe that we're  
24 providing in the condition verification.

25 Q And that's exactly the type of



1 flexibility we're looking for. If I could direct  
2 your attention to the verification on BIO-8, this  
3 verification requires that once the biological  
4 opinion is issued, that the conditions of the  
5 biological opinion be incorporated into the BRIMP,  
6 and that, according to the verification, must take  
7 place at least 60 days prior to the start of any  
8 project construction, is that correct?

9 A Yes.

10 Q And so if we got the biological opinion  
11 today, and we incorporated all the conditions into  
12 the BRIMP, we could not start construction for at  
13 least 60 days from today?

14 A That's not true.

15 Q I'm trying to understand how that isn't  
16 true, because it says at least 60 days prior to  
17 ground disturbance.

18 PRESIDING MEMBER MOORE: What exactly do  
19 you think they would be able to do that wouldn't  
20 be in violation, Mr. York? Why don't we start  
21 there. What could they be underway with that  
22 wouldn't trigger a violation of this verification  
23 condition?

24 MR. YORK: They can begin to plan their  
25 work, to -- would not want them doing anything on

1 the site, but they can get ready to work and get,  
2 you know, people lined up to begin that work.

3 But this often happens on a lot of  
4 projects where we say 60 days before we want to  
5 see the agencies, and we feel it's -- the final  
6 mitigation monitoring plan, as an example. Often  
7 that document is provided to us later than that,  
8 let's say 45 days.

9 It's never stopped them from beginning  
10 construction. We're comfortable with these 60-  
11 and 30-day timeframes because what it does is it  
12 motivates the applicant to work very hard on these  
13 documents with the full knowledge they cannot  
14 begin construction until these things are  
15 approved.

16 PRESIDING MEMBER MOORE: So, just for my  
17 own edification, when you use the phrase to begin  
18 construction, the picture I had in mind was earth-  
19 moving equipment, for instance, just to cite an  
20 example, --

21 MR. YORK: Until -- yeah.

22 PRESIDING MEMBER MOORE: -- and that's  
23 not what you have in mind? What you have in mind  
24 is mobilizing the workforce, getting the plans  
25 finalized, staking out where the cuts would go,

1 and everything except physically changing the  
2 site, itself, beginning that construction process?

3 MR. YORK: We actually have some  
4 language that we're using now that's a little  
5 different than ground disturbance. We call it  
6 site mobilization.

7 What that means, that we would not want  
8 them moving trailers onto the site, or parking.  
9 But they can get out there and they can maybe do  
10 some staking and that sort of thing. What we  
11 don't want them doing is disturbing the earth.

12 PRESIDING MEMBER MOORE: So mobilizing  
13 heavy equipment and/or supplies on site is also  
14 out?

15 MR. YORK: Out until these things are  
16 approved and final.

17 PRESIDING MEMBER MOORE: Could you  
18 visualize heavy equipment and/or supplies moving  
19 onto the site one day after this was complete?

20 MR. YORK: After what was complete?

21 PRESIDING MEMBER MOORE: After it was  
22 verified, after the 60-day period.

23 MR. YORK: Well, the final thing would  
24 be the incidental take permit from Fish and Game.

25 PRESIDING MEMBER MOORE: So, one day

1 after the incidental take permit is issued --

2 MR. YORK: We could say, if we have  
3 been, if it's been provided to us that the  
4 incidental take permit terms and conditions are  
5 part of the mitigation and monitoring plan, we  
6 have a copy of the incidental take permit, all the  
7 i's are dotted and t's are crossed, and they're in  
8 there, we could let them begin site mobilization  
9 work on the project site.

10 PRESIDING MEMBER MOORE: Can you give me  
11 an example of an i not dotted, and a t not crossed  
12 that would stop that? Something that I can  
13 visualize? You must have run up against this in  
14 the past where someone said I have the permit and  
15 you looked at it and said, well, not quite. Can  
16 you give me an example of that?

17 MR. YORK: Yeah. If there is something  
18 like an avoidance distance that Fish and Game and  
19 Fish and Wildlife Service also indicates they want  
20 the applicant to abide by during construction of  
21 some phase of the project, and the applicant has  
22 chosen a different distance or made an error, we'd  
23 want to make sure that they abide by the guidance  
24 provided by Fish and Wildlife Service or Fish and  
25 Game.

1                   So we're ultimately going to be looking  
2           at their mitigation monitoring plan, looking at  
3           the biological opinion, and the incidental take  
4           permit and making sure that everything's in there.

5                   PRESIDING MEMBER MOORE:   Okay, so as a  
6           practical matter what I'm hearing you say is that  
7           the idea of something other than a very very  
8           simple case of being able to start within 24 hours  
9           to pick a number of the permit being issued, is  
10          pretty unlikely.   That, in fact, there's going to  
11          be a review process, or a field check process on  
12          yours or your own staff's part, that's going to  
13          take place after the permit's issued.

14                  And however long that takes to make the  
15          field confirmation or field adjustment is what  
16          will really determine the start time.   But it's  
17          not likely to happen within a 24-hour period, 48-  
18          hour period.   There's going to be some time where  
19          the permit is actually fitted to the ground, as it  
20          were?

21                  MR. YORK:   Yes.   And we want to make  
22          sure that we allow the other agencies a chance to  
23          have their chance to look things over and feel as  
24          comfortable, or have the change to express their  
25          concern about the ways things are written and how

1       they're going to be implemented.

2               PRESIDING MEMBER MOORE:   How flexible  
3       are the other agencies in your experience in  
4       actually mobilizing, coming to the site to work  
5       out these conditions, make sure that they're all  
6       being met?

7               MR. YORK:   Often it doesn't involve a  
8       site visit.   What it involves, as we have set up  
9       for this project, we have a meeting, in this case,  
10      we'll get the Fish and Wildlife Service office to  
11      look at what the applicant feels is their real  
12      strong final version of the mitigation and  
13      monitoring plan.

14              It's already set up.   We should be  
15      getting their draft mitigation and monitoring plan  
16      soon.   And we have the wheels of this project in  
17      our process moving forward.

18              PRESIDING MEMBER MOORE:   Thank you.   Mr.  
19      Fay.

20              HEARING OFFICER FAY:   Mr. York, can  
21      they, even after 60 days, can they start if you  
22      haven't approved --

23              MR. YORK:   No.

24              HEARING OFFICER FAY:   -- the submittal,  
25      the biological opinion, does reflect all the

1 elements of the requirement and has been  
2 delivered, et cetera?

3 MR. YORK: Can you ask the question  
4 again, please?

5 HEARING OFFICER FAY: Well, it says at  
6 least 60 days prior to the start, the project  
7 owner shall submit a copy of the biological  
8 opinion.

9 Now, just submitting that would not be  
10 the trigger. Doesn't the staff have to concur  
11 that everything's in place?

12 MR. YORK: We have to concur that it's  
13 found its way into the mitigation and monitoring  
14 plan, Fish and Wildlife Service has seen that.

15 HEARING OFFICER FAY: So, regardless of  
16 how early they have to submit it, you have to make  
17 that determination, right?

18 MR. YORK: That's correct.

19 HEARING OFFICER FAY: So, if it just  
20 said prior to the start of project-related site  
21 mobilization, wouldn't that be the same thing?

22 MR. YORK: Well, as I said earlier, we  
23 use those timeframes, the 60 days or even earlier  
24 on certain things, because we want to make sure  
25 that we don't get all this to look at at the last

1 minute. That ultimately could delay beginning  
2 construction.

3 PRESIDING MEMBER MOORE: Oh, I  
4 understand --

5 MR. YORK: We also want to make sure  
6 that the agencies that we work closely with, that  
7 the applicant has worked closely with, that they  
8 all have a chance to fit these extra meetings in,  
9 to get these things where we want it.

10 HEARING OFFICER FAY: It just occurs to  
11 me that notwithstanding what you said about  
12 flexibility, that on the face of this, and  
13 especially to persons outside this proceeding,  
14 there's an absolute 60-day delay there that is  
15 added to the time that they submit the biological  
16 opinion.

17 And so whatever somebody calculates that  
18 delivery date is, you add 60 days, not 45 or 30 as  
19 you suggested could happen if everything was in  
20 place.

21 I'm just trying to explore that, because  
22 you've got a hard number here.

23 MR. YORK: Well, these are numbers that  
24 we've used on many cases, and as I said, other  
25 cases where the applicant did provide these things



1       within the timeframe, not prior to it, these  
2       things did not -- these were not the things that  
3       delayed them beginning construction.

4               HEARING OFFICER FAY:   Okay.   Anything  
5       further?   I think we're still in Mr. Galati's  
6       cross-examination of Mr. York.

7               MR. GALATI:   -- some additional cross-  
8       examination.

9               CROSS-EXAMINATION - Resumed

10       BY MR. GALATI:

11              Q       Mr. York, you testified, I think,  
12       earlier that you reviewed the applicant's  
13       testimony, the testimony of Bill Vanherweg, and  
14       the proposed modifications to those verifications  
15       that we've been talking about.

16              If I could summarize those changes,  
17       those proposed modifications, they do two things.  
18       And tell me if you agree.

19              One, they restrict the time, they  
20       actually shorten the time, as well as they have a  
21       phrase, or a lesser time as mutually agreed upon.  
22       So they restrict the time, and then provide  
23       flexibility for changing the time in the future.

24              Is that a proper characterization as how  
25       you see the changes?

1           A     Yes, I do.

2           Q     Do you have -- are you rejecting both of  
3     those -- let me first ask you this: I know you're  
4     rejecting shrinking the time.

5           A     Yes.

6           Q     Are you also rejecting the, or lesser  
7     time as mutually agreed?

8           A     I'm rejecting that those changes be made  
9     to the condition. I'm saying that our process  
10    allows you flexibility, and that I'm comfortable  
11    with the way the conditions are written in my  
12    testimony.

13          Q     I don't mean to belabor the point, but I  
14    have to ask one follow-up question -- your answer  
15    will likely be, but if we were to just propose  
16    leaving the timeframes as it, and just inserting  
17    the words, or lesser time as mutually agreed,  
18    would you agree with that modification?

19               MR. YORK: Can we do a little time out  
20    here? I'd like to consult my counsel.

21               HEARING OFFICER FAY: Sure, we'll take a  
22    five-minute recess.

23               (Brief recess.)

24               HEARING OFFICER FAY: Okay, let's go  
25    back on the record. All right, Mr. Galati, let's

1 continue with your cross-examination of Mr. York.

2 MR. GALATI: If I could rephrase the  
3 question.

4 BY MR. GALATI:

5 Q The question was if we were to propose  
6 that the timelines be left alone but we would  
7 insert the words into the verification, or a  
8 lesser time as mutually agreed to, would you agree  
9 with that modification to BIO-1, 7, 8 and 9?

10 A I think that the way the conditions are  
11 written you have that flexibility. And that's why  
12 I'm suggesting we leave them alone.

13 As I indicated, we have projects that do  
14 provide these documents, the required documents.  
15 Within, you know, quote-unquote, later than we  
16 would prefer them to be.

17 It does not stop them from beginning  
18 work. And that's not my intention here. What I  
19 am most concerned about is that we establish a  
20 precedent here for this case where we have others  
21 saying I want the same kind of treatment, and what  
22 we -- it ultimately backfires on all of us that we  
23 do not have the time to feel like we're doing a  
24 good job on reviewing what we feel are very  
25 important submittals.

1                   So that's, in a nutshell, is my primary  
2                   concern here. We have worked on these  
3                   verifications, worked on these conditions for many  
4                   years. And I think there is flexibility built  
5                   into them that you are already utilizing, that I  
6                   do not think that your time of construction that  
7                   you'd like to begin is going to be affected very  
8                   much. Because you are working very diligently on  
9                   these important submittals.

10                  Q     Mr. York, are you familiar with this  
11                   project's construction schedule?

12                  A     In general, yes.

13                  Q     Are you familiar with the project's  
14                   stated objective, to bring power on during the  
15                   peak summer of 2001?

16                  A     Yes.

17                  Q     Are you aware of what the implications  
18                   would be to the project being able to meet that  
19                   objective if construction didn't start in  
20                   December?

21                  A     I'm not sure what the implications would  
22                   be, other than it could delay you going on line  
23                   next summer.

24                  Q     Okay. You mentioned in your response to  
25                   my last -- a couple questions ago, you mentioned

1       that you didn't want to set a precedent in this  
2       case for other cases. Did I correctly paraphrase  
3       that?

4           A     That's correct.

5           Q     Are you aware of any other case that can  
6       bring power on during summer of 2001?

7           A     I believe LaPaloma will be providing  
8       power beginning the summer of 2001.

9           Q     Do you believe -- excuse me, I'll  
10      rephrase. Do you know of any active case before  
11      the Commission now that has not received its  
12      certification that can bring power on during the  
13      summer of 2001?

14          A     I don't know any. May not be one that  
15      I'm assigned to.

16          Q     Okay. I want to ask you some questions  
17      regarding the bird flight diverter. I believe  
18      that you produced a picture, I think it's exhibit  
19      116, a photograph of the flight diverter.

20          A     Yes.

21          Q     That's called the flapper?

22          A     Yes, it is.

23          Q     Okay. And who makes that?

24          A     I do not know who makes it. I know it's  
25      manufactured in South Africa. And the distributor

1 in North America right now is Kaddas Enterprises,  
2 Incorporated, out of Salt Lake City. And I'm not  
3 sure if they're the only ones.

4 Q Okay.

5 A They're the ones that we have been  
6 encouraged to consult.

7 Q Is that bird flight diverter or flapper  
8 that's identified in exhibit 116, is that the type  
9 that you're recommending to be installed for  
10 condors on Sunrise and LaPaloma lines?

11 A Yes, it is.

12 Q If we went out and purchased that exact  
13 one, that's what you're intending by BIO-12?

14 A At this time I think it would be.

15 MR. GALATI: Would it be appropriate for  
16 me, I just want to, on the same subject, ask the  
17 same series of questions to U.S. Fish and Wildlife  
18 and CDFG to make sure that we're all talking about  
19 the same bird flight diverter, and get that  
20 clarification now, if we can?

21 HEARING OFFICER FAY: Yeah, if there's  
22 no objection I'd like to handle it that way. Then  
23 we have it all in the same place in the record.

24 Ms. Daniels, you still with us?

25 MS. DANIELS: Yes.

1 HEARING OFFICER FAY: Good.

2 MR. GALATI: Ms. Daniels, I know you  
3 obviously can't see exhibit 116.

4 MS. HOLMES: That's all right, neither  
5 can the other people.

6 (Laughter.)

7 MR. GALATI: But it's been described as  
8 a flapper-type bird flight diverter made or  
9 distributed by Kaddas out of Salt Lake City. Are  
10 you familiar with these devices?

11 MS. DANIELS: I'm not terribly familiar  
12 with them, no. Not specifically. Only what has  
13 been described to me by Rick in the past.

14 MR. GALATI: Okay, would CDFG be  
15 approving or commenting on which device should be  
16 installed?

17 MS. DANIELS: I suspect that -- actually  
18 I don't know. I suspect we do have the  
19 opportunity to comment on them.

20 MR. GALATI: Would it be a condition of  
21 your permit?

22 MS. DANIELS: No, because condors are  
23 fully protected, and we cannot allow for any take  
24 of them. So we will not be including condor in  
25 our take permit.

1 MR. GALATI: Okay, thank you, Ms.

2 Daniels. I see Ms. Jones here from the U.S. Fish  
3 and Wildlife Service.

4 HEARING OFFICER FAY: And I'll take this  
5 opportunity to remind both Ms. Daniels and Ms.  
6 Jones that I believe you've both been placed under  
7 oath in this proceeding, and remain under oath.

8 MS. JONES: That's true.

9 MR. GALATI: Ms. Jones, the same sort of  
10 questions. We're trying to understand whether the  
11 flapper or bird flight diverter identified in  
12 exhibit 116 as one that's distributed by Kaddas  
13 out of Salt Lake City, is that the type of bird  
14 flight diverter or the bird flight diverter that  
15 U.S. Fish and Wildlife Service is recommending for  
16 the project?

17 MS. JONES: Yes, it is.

18 MR. GALATI: And if the Sunrise Project  
19 were to install this exact bird flight diverter  
20 from Kaddas Incorporated, would that meet the  
21 approval of the U.S. Fish and Wildlife Service?

22 MS. JONES: Yes, it would.

23 MR. GALATI: And I understand it should  
24 be black?

25 MS. JONES: We've been told that it's



1 not worth buying the colored ones, that they just  
2 fade.

3 MR. GALATI: Thank you.

4 If I could have a moment?

5 (Pause.)

6 MR. GALATI: I have no further questions  
7 for either Ms. Daniels, Ms. Jones or Mr. York.  
8 Thank you.

9 HEARING OFFICER FAY: Does any other  
10 party have questions of these witnesses? All  
11 right.

12 EXAMINATION

13 BY HEARING OFFICER FAY:

14 Q Ms. Jones, just very briefly, it occurs  
15 to me, and maybe it's just my lack of knowledge,  
16 but it seems that the bird flight diverters have  
17 come up very recently, and I understand the  
18 impetus was from U.S. Fish and Wildlife Service,  
19 is that correct?

20 A Yes, that's true.

21 Q Can you review the history of these  
22 devices as they've been applied to the ground wire  
23 on transmission lines?

24 A I'm not involved. There is an electric  
25 industry committee that meets and discusses this

1       and has experts. Southern California Edison is  
2       one of the people that we went to to get  
3       information. They install them on their lines not  
4       for endangered species, as far as I'm aware, but  
5       for migratory birds.

6               We are concerned about them and started  
7       researching them because of the re-introduction of  
8       condors in Ventura County and in southern Kern  
9       County that is occurring now, this year and last  
10      year.

11             So, we're seeing an influx of large  
12      unmaneuverable types of birds that are very  
13      protected by us, that we're spending a lot of  
14      money on trying to reintroduce these birds. And  
15      we have lost five so far in the last -- since  
16      they've been reintroduced due to collisions with  
17      either transmission towers or lines.

18             And we have been putting the young birds  
19      through training programs before they're released  
20      out into the wild to scare them away from  
21      transmission lines and poles -- well, from poles.  
22      And that training has not been totally effective.

23             So, the next step is to put bird flight  
24      diverters on all the lines in the areas where  
25      they're being reintroduced.

1           Q     So aside from the condor there is a  
2     history of these devices actually working and  
3     resulting in fewer impacts of the birds on the  
4     wires?

5           A     Yeah. I have been talking to experts in  
6     some of the utility industries in this area, but I  
7     have not gone to a literature study. I think Rick  
8     York says he can talk to that a bit. I know that  
9     there's work done in Europe on this.

10           HEARING OFFICER FAY: Okay, Mr. York?

11           MR. YORK: Yeah, the bird flight  
12     diverters are used in a number of locations around  
13     the world. There's research going on right now to  
14     see how effective they are. Kaddas Industries or  
15     Kaddas Enterprises is one of the groups that's  
16     involved in gathering information.

17           They are proposing by next spring to  
18     present information about how successful they are.  
19     They're involved in some two- and three-year  
20     studies at a variety of locations.

21           As of this morning they indicated that  
22     they were seeing 75 percent fewer collisions with  
23     ground wires in their study locations. And like I  
24     said, they're planning on publishing the results  
25     of these studies 2001.

1                   A variety of locations are being used to  
2           keep cranes and large birds like that in South  
3           Africa from colliding with ground wires. They're  
4           used in Europe and in England to keep birds from -  
5           - sea birds primarily from colliding with ground  
6           wires. And they are being installed in North  
7           America to lessen the likelihood of large birds  
8           like eagles and other birds of prey from colliding  
9           with ground wires.

10                   And Bob Hartman, who I talked to this  
11           morning from Kaddas Industries, said they were  
12           very pleased with the results around the world  
13           that they were seeing in their studies.

14                   HEARING OFFICER FAY: Okay, thank you.  
15           Any further cross-examination of the staff's  
16           biology witnesses? I see no indication, so you're  
17           both excused, unless Ms. Holmes has redirect.

18                   MR. GALATI: Mr. Fay, --

19                   HEARING OFFICER FAY: Yes.

20                   MR. GALATI: -- if I could ask for some  
21           leeway here to bring up, as you know, the project  
22           is being sold. It's in the middle of that deal  
23           with Edison Mission Energy. And there is a  
24           representative from Edison Mission Energy that  
25           would like an opportunity to comment on the

1 verifications that we just discussed. That person  
2 is an attorney, Mr. Robert Wyman.

3 HEARING OFFICER FAY: Does the staff  
4 have any objection to this?

5 MS. HOLMES: No.

6 HEARING OFFICER FAY: All right. His  
7 comment, certainly. Please introduce yourself.

8 MR. WYMAN: Yes, thank you very much.  
9 My name is Bob Wyman. I'm with the lawfirm of  
10 Lathan and Watkins, and I represent, as Mr. Galati  
11 indicated, Edison Mission Energy, which is the  
12 equitable owner of the project, but not yet the  
13 full legal owner. It's waiting for the closing of  
14 the agreement to acquire the project from Texaco.

15 I appreciate very much the chance to  
16 speak to you briefly today. I felt it was  
17 important because the last issue that's been  
18 discussed with the Committee is, in our view, I  
19 think, of vital importance.

20 As Mr. Galati has explained, this is a  
21 project whose primary, and in our view, sole  
22 purpose is to bring power up next summer. And in  
23 order to do that the construction schedule is  
24 extremely tight.

25 In our view we need to start literally

1       hours from the date the Commission issues a  
2       certification on December 6th, which hopefully it  
3       will do.

4               If there is any slippage in that  
5       construction schedule we are extremely concerned  
6       about the ability to achieve the project's  
7       objective. And when we look at the language  
8       that's being addressed at the moment, the  
9       verification language that Mr. Galati and others  
10      have addressed, while it's comforting to hear the  
11      staff say that the explicit language is not what  
12      they mean, which is in essence the way we read it.

13              We read the language as being quite  
14      explicit and quite clear, in essence prohibiting  
15      the activities of commencing construction until  
16      the passage of those respective periods of time.

17              And while the staff indicates that  
18      that's not entirely what they mean, and there are  
19      ways to reach agreements if they review the  
20      documents and they find them to be acceptable,  
21      it's hard for us to see how we can ignore the  
22      plain language of the conditions.

23              If that's what the conditions say that's  
24      what we are bound to comply with. And so I think,  
25      in our view, what Mr. Galati was suggesting was

1 closer to what the witness from the Energy  
2 Commission was saying they would do. Which is,  
3 if, in fact, they do find the documents to be  
4 acceptable they will work something out.

5 If that, in fact, is possible we applaud  
6 that, and we, of course, aspire to it. But we  
7 want to make sure that the language, or whatever  
8 decision the Commission makes, is one we adhere  
9 to. And that's why we're feeling uncomfortable  
10 with proceeding with any possibility at all that  
11 we would not be acting consistently with that  
12 language.

13 So we would urge the Committee to  
14 support Mr. Galati's suggestion, which I think is  
15 really, in all respects, consistent with the  
16 testimony of the Commission's witness. But a  
17 necessary change to what would be in the  
18 verification provisions.

19 Thank you very much for the chance to  
20 address you today.

21 HEARING OFFICER FAY: All right, thank  
22 you.

23 MR. WYMAN: Are there any questions  
24 before I return to my seat?

25 MR. GALATI: No, thank you. Thank you,

1 Mr. Fay, thank you, Committee.

2 HEARING OFFICER FAY: All right, do any  
3 of the other parties have testimony on biological  
4 resources? No. Okay.

5 Let's move forward then. The next topic  
6 I have on the list is transmission line safety and  
7 nuisance. Mr. Galati.

8 MS. HOLMES: Mr. Fay, would you release  
9 Ms. Daniels? I believe she's still on the line.

10 HEARING OFFICER FAY: Oh, Ms. Daniels,  
11 I'm sorry. Thank you very much for your  
12 assistance.

13 MS. DANIELS: Okay, I was assuming I  
14 could bail at this point, thanks.

15 HEARING OFFICER FAY: You're welcome to  
16 stay with us, but we understand if you have other  
17 things to do. And we have concluded taking  
18 testimony on biological resources. So if you  
19 don't have any specific comment to make at this  
20 time on that subject, then we can excuse you.

21 MS. DANIELS: Thank you very much.

22 HEARING OFFICER FAY: All right, --

23 MS. DANIELS: Thank you for letting me  
24 testify by phone.

25 HEARING OFFICER FAY: -- good bye.



1 MS. DANIELS: Bye bye.

2 HEARING OFFICER FAY: All right, Mr.  
3 Galati.

4 MR. GALATI: We have no testimony on  
5 transmission line safety.

6 HEARING OFFICER FAY: Okay, that was  
7 listed in your prehearing conference statement.

8 MR. GALATI: I apologize --

9 HEARING OFFICER FAY: Okay, that's all  
10 right. Staff, is there --

11 MS. HOLMES: Staff has testimony on  
12 transmission line safety and nuisance. It's on  
13 page 59 of exhibit 108 and it's sponsored by Obed  
14 Odoemelam.

15 HEARING OFFICER FAY: Any objection to  
16 receiving that into evidence? I hear none, we'll  
17 move it in at this point.

18 Okay. I'll remind people that we're  
19 scheduled to take up air quality at 3:00 p.m. Any  
20 objection to moving to public health, or would you  
21 rather hold that up until we're done with air  
22 quality?

23 MR. GALATI: I think we can go ahead  
24 with public health.

25 HEARING OFFICER FAY: All right,

1 Mr. Galati, then.

2 MR. GALATI: Yes. We'd like to move  
3 into evidence portions of exhibit 109 entitled  
4 testimony and declaration of David A. Stein on  
5 public health docketed on November 2, 2000.

6 HEARING OFFICER FAY: Any objection?  
7 All right, so moved then.

8 And staff has testimony on public  
9 health?

10 MS. HOLMES: Staff has testimony on  
11 public health. It begins on page 55 of exhibit  
12 108, and again it's sponsored by Obed Odoemelam.

13 HEARING OFFICER FAY: Any objection to  
14 moving it in at this point? Okay, that is moved  
15 into the record at this point.

16 Before moving on to the next topic which  
17 is hazardous materials, I just noticed some  
18 housekeeping. There were two staff declarations  
19 that were filed that were not signed, one by  
20 Kisabuli and one by Joe Loyer. And I just want to  
21 be sure that we get that taken care of.

22 MS. HOLMES: We'll take care of that.

23 HEARING OFFICER FAY: Okay. Good.

24 Okay, hazardous materials management.

25 MR. GALATI: We would like to move into

1 the evidentiary record portions of exhibit 109  
2 entitled testimony and declaration of Don Muraoka  
3 on hazardous materials docketed November 2, 2000.

4 HEARING OFFICER FAY: Any objection? So  
5 moved. Staff?

6 MS. HOLMES: Staff's testimony on  
7 hazardous materials handling is found in exhibit  
8 108 beginning at page 61. The witness is Rick  
9 Tyler.

10 HEARING OFFICER FAY: Any objection to  
11 moving Mr. Tyler's testimony at this time?

12 MR. GALATI: No objection.

13 HEARING OFFICER FAY: All right, so  
14 moved.

15 Worker safety and fire protection.

16 MR. GALATI: The applicant would like to  
17 move into the evidentiary record a portion of  
18 exhibit 109 entitled testimony and declaration of  
19 Don Muraoka on worker health and safety and fire  
20 protection, docketed November 2, 2000.

21 HEARING OFFICER FAY: Any objection? So  
22 moved. Staff?

23 MR. GALATI: I'm sorry, we have one  
24 additional exhibit.

25 HEARING OFFICER FAY: Oh, you do?

1                   MR. GALATI: Yes, one additional exhibit  
2                   is the response to CEC data request number 8,  
3                   docketed on October 6, 2000. We'd like that  
4                   marked and moved into the record.

5                   MS. HOLMES: Excuse me, what was the  
6                   date?

7                   MR. GALATI: October 6th.

8                   MS. HOLMES: Thank you.

9                   HEARING OFFICER FAY: That would be  
10                  exhibit 117. Is that all, Mr. Galati?

11                  MR. GALATI: We'd just like that moved  
12                  into the evidentiary record.

13                  HEARING OFFICER FAY: Okay, any  
14                  objection? So moved.

15                  MR. GALATI: That's all on worker health  
16                  and safety and fire protection.

17                  HEARING OFFICER FAY: Okay. And Staff?

18                  MS. HOLMES: Staff's testimony on worker  
19                  safety and fire protection is found on page 57 of  
20                  exhibit 108, and it's sponsored by Chris Tooker.

21                  HEARING OFFICER FAY: Any objection to  
22                  moving that in at this point?

23                  MR. GALATI: No objection.

24                  HEARING OFFICER FAY: So moved. Just in  
25                  case, and I don't recall if we actually moved in

1 the staff biological resources testimony --

2 MS. HOLMES: We haven't moved in any  
3 except transmission system engineering, at the  
4 request of Mr. DeCuir. I was planning to wait  
5 until the end and introduce them all at once. But  
6 it seems to me that we've sort of changed our game  
7 plan in the middle of the hearing.

8 HEARING OFFICER FAY: Yeah, if you  
9 haven't had a problem with that I've sort of been  
10 assuming that they've been moved in as we went, so  
11 that we can address each one --

12 MS. HOLMES: As long as that's made  
13 clear on the record at some point that all of our  
14 sections did get moved into the record, that's  
15 fine.

16 HEARING OFFICER FAY: Sure. And you can  
17 do that at the end, and that's fine. So we'll  
18 cover it that way.

19 MR. GALATI: And I apologize, Mr. Fay, I  
20 don't remember if I asked for the cultural  
21 resources testimony and declaration of David  
22 Stein, which was part of 109, to be moved into the  
23 record. If you already have, I apologize. If  
24 not, I'd like that moved into the record, as well.

25 HEARING OFFICER FAY: Okay, is there any

1 objection? So moved.

2 Any cultural resources testimony of  
3 staff to be moved? We have received your exhibit.

4 MS. HOLMES: Yes, there was an exhibit  
5 that was provided to people earlier today.

6 HEARING OFFICER FAY: Exhibit 111,  
7 Cultural --

8 MS. HOLMES: Exhibit 111. There's also  
9 a section of exhibit 108 that begins on page 73  
10 that's cultural resources testimony. It was  
11 provided by Gary Reinoehl and Dorothy Torres.

12 HEARING OFFICER FAY: Any objection to  
13 receiving that at this point?

14 MR. GALATI: No objection.

15 HEARING OFFICER FAY: So moved. Geology  
16 and paleontology.

17 MR. GALATI: Yes, we would like to move  
18 into the evidentiary record a portion of exhibit  
19 109, docketed on November 2nd, testimony and  
20 declaration of Thomas F. Cudzillo.

21 HEARING OFFICER FAY: Any objection?

22 MS. HOLMES: No objection.

23 HEARING OFFICER FAY: So moved. Staff?

24 MS. HOLMES: Staff has testimony in  
25 exhibit 109 on geology and paleontology. It

1 begins on page 101 and it's sponsored by Robert  
2 Anderson.

3 HEARING OFFICER FAY: in exhibit 108, is  
4 it?

5 MS. HOLMES: Exhibit 108.

6 HEARING OFFICER FAY: And it begins on  
7 page what?

8 MS. HOLMES: It begins on page 101.

9 HEARING OFFICER FAY: 101, okay. Any  
10 objection to moving that in now?

11 MR. GALATI: No objection.

12 HEARING OFFICER FAY: All right, so  
13 moved.

14 Soil and water resources.

15 MR. GALATI: We have a couple of  
16 testimony -- we have the testimony and declaration  
17 of Thomas F. Cudzillo for soil resources as part  
18 of exhibit 109, docketed on November 2nd.

19 And we have the testimony and  
20 declaration of David A. Stein on water resources,  
21 also part of exhibit 109, docketed on November  
22 2nd.

23 We'd like those to be moved into  
24 evidence.

25 HEARING OFFICER FAY: any objection? So

1 moved. Staff, soil and water.

2 MS. HOLMES: Staff has testimony on soil  
3 and water resources in exhibit 108. The testimony  
4 begins on page 97, and it's sponsored by Joe  
5 O'Hagan.

6 HEARING OFFICER FAY: Any objection to  
7 moving that in at this point?

8 MR. GALATI: No objection.

9 HEARING OFFICER FAY: So moved. It's  
10 received into evidence.

11 Waste management.

12 MR. GALATI: We have no testimony on  
13 waste management.

14 HEARING OFFICER FAY: Staff?

15 MS. HOLMES: Staff has testimony on  
16 waste management in exhibit 108. It begins on  
17 page 63 and it's sponsored by Mike Ringer.

18 HEARING OFFICER FAY: Any objection to  
19 moving that in at this point?

20 MR. GALATI: No objection.

21 HEARING OFFICER FAY: All right, so  
22 moved.

23 Land use.

24 MR. GALATI: Land use, we have the joint  
25 testimony and declarations of Sherry J. Smith and



1 Don Muraoka on land use that was docketed as part  
2 of exhibit 109 on November 2, 2000.

3 We also have Mr. Muraoka available  
4 should the Committee have any questions regarding  
5 our proposed revisions to land use-2 dealing with  
6 the community benefit to the community of Derby  
7 Acres. We'd like to move that into evidence at  
8 this time.

9 HEARING OFFICER FAY: All right. The  
10 Committee doesn't need to question Mr. Muraoka on  
11 that. We have your written submittal. And if  
12 you're still comfortable with that, for the  
13 Committee's consideration, then I think that's  
14 enough.

15 Does staff have any objection to just  
16 receiving that into evidence now?

17 MS. HOLMES: No objection.

18 HEARING OFFICER FAY: Okay. So we'll  
19 move applicant's land use testimony. And does  
20 staff have testimony, as well?

21 MS. HOLMES: Staff has testimony on land  
22 use in exhibit 108. It begins on page 65 and is  
23 sponsored by Amanda Stennick.

24 HEARING OFFICER FAY: Any objection to  
25 moving that in at this point? Okay, so moved.

1                   We dealt with noise earlier.

2                   MR. GALATI: I don't believe I moved  
3 those into the record, though --

4                   HEARING OFFICER FAY: Okay, let's  
5 formally move those now.

6                   MR. GALATI: That is a portion of  
7 exhibit 109, testimony and declaration of Timothy  
8 E. Reinhardt, R-e-i-n-h-a-r-d-t, docketed on  
9 November 2nd. And exhibit 110, which was the  
10 supplemental testimony and declaration of David A.  
11 Stein regarding noise. Move those into the record  
12 at this time.

13                  HEARING OFFICER FAY: Any objection? So  
14 moved.

15                  Staff.

16                  MS. HOLMES: Staff's testimony on noise  
17 is contained in exhibit 108, beginning on page 69.  
18 It was sponsored by Kisabuli. I would point out  
19 that the written testimony was amended by his  
20 testimony on the stand regarding the acceptability  
21 of the language contained in exhibit 110.

22                  HEARING OFFICER FAY: And he agreed with  
23 exhibit 110?

24                  MS. HOLMES: Yes, that's correct.

25                  HEARING OFFICER FAY: Thank you. Any

1 objection to receiving staff's noise testimony? I  
2 hear none. That's received into evidence.

3 Socioeconomics.

4 MR. GALATI: We'd like to move into  
5 evidence the testimony and declaration of Don  
6 Muraoka on socioeconomics, a portion of exhibit  
7 109, docketed on November 2, 2000.

8 HEARING OFFICER FAY: Objection? All  
9 right, so moved.

10 Staff.

11 MS. HOLMES: Staff has testimony on  
12 socioeconomics in exhibit 108. It begins on page  
13 79, and it's sponsored by Joe Diamond.

14 HEARING OFFICER FAY: Any objection to  
15 receiving that at this point?

16 MR. GALATI: No objection.

17 HEARING OFFICER FAY: So moved. Traffic  
18 and transportation.

19 MR. GALATI: We'd like to move into  
20 evidence a portion of exhibit 109 docketed on  
21 November 2nd, entitled, testimony and declaration  
22 of Don Muraoka, M-u-r-a-o-k-a.

23 HEARING OFFICER FAY: Any objection to  
24 receiving that? All right, so moved.

25 Staff.

1 MS. HOLMES: Staff's testimony on  
2 traffic and transportation is contained in exhibit  
3 108. It begins at page 67 and it's sponsored by  
4 David Flores.

5 HEARING OFFICER FAY: I'm sorry, begins  
6 on what page?

7 MS. HOLMES: Page 67.

8 HEARING OFFICER FAY: Okay, any  
9 objection to receiving that in evidence at this  
10 point?

11 MR. GALATI: No objection.

12 HEARING OFFICER FAY: So moved. Visual  
13 resources.

14 MR. GALATI: We'd like to move in the  
15 portion of exhibit 109 entitled, testimony and  
16 declaration of Don Muraoka on visual resources,  
17 docketed November 2, 2000.

18 HEARING OFFICER FAY: Any objection? I  
19 hear none. So we'll move that into evidence at  
20 this point. Staff.

21 MS. HOLMES: Staff's testimony on visual  
22 resources is contained in exhibit 108; it begins  
23 on page 71, and is sponsored by Gary Walker.

24 HEARING OFFICER FAY: Any objection to  
25 receiving that at this point?

1 MR. GALATI: No objection.

2 HEARING OFFICER FAY: All right, move  
3 that into evidence.

4 That concludes all the evidence with the  
5 exception of air quality. And I'd just like to  
6 ask Mr. Galati if we can, in summary, indicate all  
7 the areas that the applicant has agreed with the  
8 FSA, and if it is not total agreement, then what  
9 we must reference.

10 MR. GALATI: Okay, Mr. Fay, we'd like  
11 one more housekeeping. We didn't take up  
12 paleontological resources. And we have testimony  
13 and declaration of E. Bruce Lander on  
14 paleontological resources, as a portion of exhibit  
15 109, docketed on November 2nd. And I have one  
16 more exhibit dealing with paleontological  
17 resources. That is a response to CEC data request  
18 number 7, docketed on October 6th.

19 If we could have that marked and moved  
20 into the record.

21 HEARING OFFICER FAY: Mark that as  
22 exhibit 118. And that was response to which data  
23 request? Seven.

24 MR. GALATI: I'm sorry?

25 HEARING OFFICER FAY: That was response

1 to data request number 7?

2 MR. GALATI: Correct, that was response  
3 to data request number 7 docketed on October 6th.

4 HEARING OFFICER FAY: Okay. All right,  
5 now, back to my question. I'm under the  
6 impression that with a few exceptions applicant  
7 has agreed to all the conditions proposed by staff  
8 in its supplemental FSA. I wonder if you could  
9 confirm that and indicate where there is differing  
10 on that.

11 MR. GALATI: Correct. We have agreed to  
12 the conditions in facility design. We have  
13 proposed modifications and disagree, at least at  
14 this stage, with some conditions of air quality,  
15 although we understand that those have been worked  
16 out and we're anticipating getting a document  
17 reflecting that.

18 We agree with the conditions on public  
19 health, if there are any. We agree with the  
20 conditions on hazardous materials. We agree with  
21 the conditions on worker health and safety and  
22 fire protection.

23 And other than the verifications that we  
24 discussed in biological resources for BIO-1, 7, 8  
25 and 9, we agree with the conditions of the

1 biological resource sections of the FSA.

2 We agree with the cultural resources  
3 conditions including the modified Cultural-1. We  
4 agree with the geological resources conditions.  
5 We agree with the paleontological resources  
6 conditions. We agree with the soil and water  
7 resources conditions.

8 We agree with the land use conditions,  
9 including our proposed Land Use-2. We agree with  
10 the conditions on noise, including our proposed  
11 revision to Noise-6. We agree with the conditions  
12 on traffic and transportation. And we agree with  
13 the conditions on visual resources.

14 And if I could have a moment.

15 (Pause.)

16 MR. GALATI: And we agree with the  
17 conditions of socioeconomics.

18 HEARING OFFICER FAY: Okay, good. All  
19 right, I think that covers everything except air  
20 quality.

21 MR. GALATI: And we believe we'll be  
22 agreeing with air quality. So the only disputes  
23 we have are the verifications of BIO-1, 7, 8 and  
24 9.

25 HEARING OFFICER FAY: Okay. Can we move

1 to air quality at this time, or do we need a  
2 recess before 3:00?

3 MR. GALATI: Yeah, I think we can move  
4 to air quality.

5 HEARING OFFICER FAY: All right, let's  
6 go ahead. Bring up your witnesses.

7 MR. GALATI: The applicant calls David  
8 A. Stein, who's been previously sworn and  
9 previously submitted testimony.  
10 Whereupon,

11 DAVID A. STEIN  
12 was recalled as a witness herein and having been  
13 previously duly sworn, was examined and testified  
14 further as follows:

15 HEARING OFFICER FAY: Mr. Galati, are we  
16 expecting calls from the District and CARB, as  
17 well?

18 MR. GALATI: We're not expecting a call  
19 from CARB. We had a workshop today in which CARB  
20 did participate, and --

21 MR. HAUSSLER: Actually we are expecting  
22 Ray or the staff to call in.

23 MR. GALATI: Everyone else is expecting  
24 CARB to call but me.

25 HEARING OFFICER FAY: Okay, all right.



1                   MR. GALATI: And we are expecting a call  
2                   from Sayed Sadredin of the San Joaquin Valley  
3                   Unified Air Pollution Control District.

4                   HEARING OFFICER FAY: Okay.

5                   DIRECT EXAMINATION

6                   BY MR. GALATI:

7                   Q     Mr. Stein, you previously described your  
8                   qualifications for the Committee. Did you prepare  
9                   the air quality testimony submitted as part of the  
10                  applicant's testimony package on November 2, 2000?

11                  A     Yes.

12                  MR. GALATI: Mr. Fay, if I could mark  
13                  for identification a number of documents sponsored  
14                  by Mr. Stein.

15                  HEARING OFFICER FAY: These have already  
16                  been submitted?

17                  MR. GALATI: Correct, they've all been  
18                  submitted. The first is a compliance  
19                  certification letter dated October 27, 2000, from  
20                  Southern California Edison to the San Joaquin  
21                  Valley Unified Air Pollution Control District,  
22                  docketed on October 30, 2000.

23                  HEARING OFFICER FAY: Exhibit 119.

24                  MR. GALATI: The next document is  
25                  entitled, compliance certification letter, dated

1       October 27, 2000 from Edison Mission Energy to San  
2       Joaquin Valley Unified Air Pollution Control  
3       District. Also docketed on October 30th. And I  
4       have copies of these if the Committee would like  
5       to see these now.

6               HEARING OFFICER FAY: That will be  
7       exhibit 120.

8               MR. GALATI: The next document is  
9       entitled, notice of nonapplicability of PSD  
10       regulations dated October 24, 2000 from Amy  
11       Zimpfer, Z-i-m-p-f-e-r, EPA Region 9, to Gordon  
12       Thompson, Sunrise Power Company. Also docketed on  
13       October 30, 2000.

14              HEARING OFFICER FAY: That's exhibit  
15       121.

16              MR. GALATI: The next exhibit is Sunrise  
17       air quality issues update and errata to CEC data  
18       response 2, dated October 31, 2000, and docketed  
19       on October 31, 2000.

20              HEARING OFFICER FAY: Exhibit 122.

21              MR. GALATI: The next exhibit is  
22       response to CEC data request number 1 and 5.  
23       Docketed on October 6, 2000.

24              HEARING OFFICER FAY: Exhibit 123.

25              MR. GALATI: We also have the

1 supplemental testimony and declaration of David A.  
2 Stein, docketed --

3 HEARING OFFICER FAY: Is this in  
4 addition to --

5 MR. GALATI: Correct.

6 HEARING OFFICER FAY: Okay.

7 MR. GALATI: -- docketed on November 7,  
8 2000.

9 HEARING OFFICER FAY: And this is not  
10 contained in the packet of exhibit 109, is that  
11 correct?

12 MR. GALATI: That's correct, it is not  
13 contained in 109.

14 HEARING OFFICER FAY: That's exhibit  
15 124. And, Mr. Galati, are you in agreement with  
16 the revised language that Mr. Pryor passed out.  
17 If so, if you don't object I'd like to mark that  
18 at this time.

19 MR. GALATI: We'll be asking Mr. Stein  
20 about this.

21 HEARING OFFICER FAY: Well, do you  
22 object to marking it?

23 MR. GALATI: No, we don't object to  
24 marking it.

25 HEARING OFFICER FAY: Let's mark air

1       quality pages 32 and 33. This appears to be a  
2       revised version of AQC-2, and C-3, with  
3       verifications passed out by the staff and dated  
4       October 26, 2000, with strike-out and underline.  
5       That will be exhibit 125.

6                Okay, go ahead, Mr. Galati.

7       BY MR. GALATI:

8               Q     Okay, Mr. Stein, you prepared the  
9       testimony on the air quality portion of 109,  
10      correct?

11             A     Yes, I did.

12             Q     And did you make any conclusions  
13      regarding impacts and the compliance with the  
14      simple cycle project with all applicable air  
15      quality LORS?

16             A     Yes, I did. The project, as amended for  
17      simple cycle, will comply with all applicable  
18      laws, ordinances, regulations and standards. And  
19      is fully mitigated so that there will be no  
20      significant impacts to air quality.

21             Q     And, Mr. Stein, did you have an  
22      opportunity to review the final staff assessment?

23             A     I did.

24             Q     And did you initially have comments on  
25      AQC-2 and condition AQC-3?

1           A     Yes, I did.

2           Q     Have you seen staff's revision to that  
3 testimony?

4           A     Yes, I have.

5           Q     And do you agree with it?

6           A     I do.

7           Q     Do you now agree with the final staff  
8 assessment in its entirety?

9           A     I agree with the changes that are made  
10 on air quality C-2 and C-3. The other comments  
11 that I have --

12          Q     I apologize. Do you agree with the  
13 conditions of certification outlined in the final  
14 staff assessment with the changes to AQC-2 and  
15 AQC-3 with the revised staff testimony?

16          A     Yes. Specifically I agree with the  
17 changes made to AQC-2 and AQC-3.

18          Q     Mr. Stein, did you prepare supplemental  
19 testimony to your air quality testimony which was  
20 docketed on November 7th?

21          A     Yes, I did.

22          Q     And could you briefly summarize what  
23 that testimony is?

24          A     The testimony consists of proposed  
25 changes to AQ-41 to reflect some agreements that

1       were reached with the California Air Resources  
2       Board and the Energy Commission Staff and --

3               MR. MENNEBROKER:   This is Ray  
4       Mennebroker on the line.

5               HEARING OFFICER FAY:   Excuse me, Mr.  
6       Stein.   Hello, who do we have on the line?

7               MR. MENNEBROKER:   Ray Mennebroker with  
8       the Air Resources Board.

9               HEARING OFFICER FAY:   Welcome.   We are  
10       just in the middle of cross-examination of David  
11       Stein, the applicant's consultant.   And if you can  
12       bear with us for a few more minutes we'll be  
13       asking you some questions.   Thank you.

14               Go ahead, Mr. Stein.

15               MR. STEIN:   Yes, in addition to the  
16       changes recommended to AQ-41, I am also proposing  
17       a new condition, AQ-42, as shown in the  
18       supplemental testimony, which also reflects  
19       agreement reached with ARB Staff and CEC Staff.

20       BY MR. GALATI:

21               Q       Could you briefly summarize the change  
22       you recommend to AQ-41 and the contents of new AQ-  
23       42?

24               A       Yeah, I can certainly do that.   AQ-41  
25       basically accomplishes two things, yet would

1 restrict the operation of the simple cycle project  
2 in the period from the license to the date  
3 December 31, 2002.

4 It also would preclude Sunrise from  
5 seeking an extension to that date, subject to an  
6 application to amend the project to convert it to  
7 either a combined cycle or a cogeneration project.

8 AQ-42 specifies that Sunrise agrees not  
9 to claim additional emission reduction credit  
10 beyond the original ERC package proposed for the  
11 project if and when the project is converted from  
12 the simple cycle configuration to a combined  
13 cycle, or a cogeneration project.

14 In addition, if Sunrise were permanently  
15 shut down after the simple cycle phase, Sunrise  
16 would seek NOx emission reduction credits based on  
17 permitted NOx emissions adjusted to 5 ppm.

18 MR. GALATI: At this time, Mr. Fay, if I  
19 may be permitted to ask CARB some questions?

20 HEARING OFFICER FAY: Certainly.

21 MR. GALATI: Mr. Mennebroker, can you  
22 hear me?

23 MR. MENNEBROKER: Sure can.

24 MR. GALATI: This is Scott Galati  
25 representing the applicant.

1 MR. MENNEBROKER: Yes.

2 MR. GALATI: We were just talking about  
3 with Mr. Stein two conditions, a modification to  
4 AQ-41, and a new proposed condition AQ-42.

5 Have you had an opportunity to review  
6 those?

7 MR. MENNEBROKER: Yes.

8 MR. GALATI: And it's my understanding  
9 that you requested that additional language be  
10 placed into AQ-41?

11 MR. MENNEBROKER: Correct.

12 MR. GALATI: Specifically at the end of  
13 the words, California Energy Commission, remove  
14 the period and add: to construct the combined  
15 cycle or cogeneration project. Period.

16 MR. MENNEBROKER: Right.

17 MR. GALATI: With that modification do  
18 you agree with AQ-41 and AQ-42?

19 MR. MENNEBROKER: We do.

20 MR. SADREDIN: This is Sayed Sadredin; I  
21 just joined.

22 HEARING OFFICER FAY: Welcome. What  
23 we're addressing is revisions to conditions AQ-41  
24 and AQ-42, and Ray Mennebroker of CARB just voiced  
25 his agreement to those changes.



1                   MR. GALATI: Mr. Mennebroker, with the  
2                   incorporation of these conditions into the  
3                   project, would you have no adverse comment on the  
4                   PDOC or the Energy Commission licensing for this  
5                   project?

6                   MR. MENNEBROKER: We would not.

7                   MR. GALATI: That concludes our direct  
8                   testimony on air quality.

9                   HEARING OFFICER FAY: All right, thank  
10                  you. Does the staff have any cross-examination of  
11                  Mr. Stein?

12                 MS. HOLMES: No.

13                 HEARING OFFICER FAY: Do any of the  
14                 other parties wish to cross-examine Mr. Stein? Do  
15                 the people on line from CARB have any questions of  
16                 Mr. Stein regarding these changes?

17                 MR. MENNEBROKER: No, we don't. We've  
18                 discussed them and the conditions reflect our  
19                 understanding of what they're going to propose.  
20                 And if it's proposed, we have no comment.

21                 HEARING OFFICER FAY: Thank you. We  
22                 have representatives from the District on line.  
23                 Do you have any questions of Mr. Stein regarding  
24                 these changes?

25                 MR. SADREDIN: No, I don't.

1                   HEARING OFFICER FAY: And do you find  
2                   them acceptable?

3                   MR. SADREDIN: The substance of it is  
4                   okay. We might -- there are some words in there  
5                   that we might have to revise somewhat.

6                   HEARING OFFICER FAY: Could you be more  
7                   specific since we're dealing with it at this time?  
8                   Do you have the text before you?

9                   MR. SADREDIN: Yeah, I have a faxed copy  
10                  of it. It's somewhat hard to read, the underlined  
11                  and crossed-out parts of it.

12                  I guess the most important change that  
13                  we might put in place is on AQ-42, the last  
14                  sentence where it says: NOx reductions beyond  
15                  those based on permitted NOx emissions, we might  
16                  change that to say: based on actual NOx  
17                  emissions.

18                  So, replacing the word permitted with  
19                  actual. But that is not -- right now, as it's  
20                  written it says that's the most you can get with  
21                  permitted. With actual you would end up getting  
22                  less credits. So that would be consistent with  
23                  the substance of what's in there.

24                  PRESIDING MEMBER MOORE: Mr. Galati, do  
25                  you have a response to that?

1                   MR. GALATI: If I may have just a  
2                   moment.

3                   (Pause.)

4                   HEARING OFFICER FAY: Does that change  
5                   make any difference to you, Mr. Mennebroker?

6                   MR. MENNEBROKER: One or the other?

7                   HEARING OFFICER FAY: Yes.

8                   MR. MENNEBROKER: No, but we're happy  
9                   with it the way it is.

10                  (Pause.)

11                  HEARING OFFICER FAY: Mr. Sadredin, this  
12                  is Gary Fay, the Hearing Officer. Could you  
13                  describe for us what you see as the significance  
14                  of the change you've recommended? What difference  
15                  does it make?

16                  MR. SADREDIN: In general we issue  
17                  credits for ERCs in this case based on actual  
18                  emissions as opposed to permitted emissions. In  
19                  other words, if we had a facility that operated  
20                  for a number of years, and then they shut down,  
21                  the credits that they would be entitled to would  
22                  be what their actual operation for the last two  
23                  years has averaged to.

24                  And then that's what they would be able  
25                  to get credits for, whatever they had been

1 actually historically putting into the atmosphere,  
2 as opposed to what they were permitted to do.

3 In this case they might be permitted to  
4 a larger amount, but if after two years they are  
5 below that, and they decide to shut down, after  
6 they had received permit and operated for a couple  
7 of years, they would only be entitled to the  
8 actual emissions for credit, as opposed to the  
9 permitted emissions.

10 HEARING OFFICER FAY: And even though  
11 the -- regardless of whether the limit works in  
12 the District's favor or not, you prefer to rely on  
13 actual rather than permitted, is that correct?

14 MR. SADREDIN: Right, for precedential  
15 reasons -- purposes. It would be a new set of  
16 precedents that we do issue credits based on  
17 permitted emissions as opposed to actual, and that  
18 is not a precedence that we'd like to establish.

19 Now, granted here ARB has asked the  
20 source and they've agreed to take another  
21 discounting that would not be normally required  
22 under our rule, that is adjusting those credits  
23 down to 5 ppm.

24 And depending on where they are in terms  
25 of their historic emissions and their permitted

1 emissions, that may be more than enough to make up  
2 for that, but on the other hand, if they operate  
3 well below their permitted level, that may not be  
4 sufficient to make up for that difference.

5 HEARING OFFICER FAY: Okay. We're  
6 giving the applicant a few minutes to discuss this  
7 among themselves.

8 MR. SADREDIN: And I have just one minor  
9 thing on AQ-41, also. But, when you think it's  
10 appropriate to talk about that.

11 HEARING OFFICER FAY: Okay, let's wait.

12 MR. GALATI: Okay, can we have a moment  
13 to deal with AQ-42, and then we'll --

14 HEARING OFFICER FAY: Okay.

15 (Pause.)

16 (Brief recess.)

17 HEARING OFFICER FAY: We took a brief  
18 recess to discuss AQ-42. Mr. Galati.

19 MR. GALATI: Mr. Sadredin, if we  
20 modified AQ-42 to take out the word permitted in  
21 the last line and put actual, as you recommended,  
22 would you agree with the condition AQ-42?

23 MR. SADREDIN: Yes.

24 MR. GALATI: Then the applicant agrees  
25 to do that, to modify --

1 BY MR. GALATI:

2 Q Well, Mr. Stein, would you modify your  
3 testimony to AQ-42 to reflect the changes we just  
4 discussed?

5 A Yes.

6 PRESIDING MEMBER MOORE: And then  
7 there's a minor modification on AQ-41. Let's go  
8 there, Mr. Sadredin.

9 MR. SADREDIN: Yes, basically at this  
10 point a question. And it's revised with authority  
11 to construct has been crossed out as the document  
12 that the source would need to obtain to modify and  
13 go from a single cycle to combined or cogen.

14 This one we're not certain -- I've only  
15 had this for a short period of time, so I haven't  
16 had a chance to research it -- that once a  
17 facility is built they already have their CEC  
18 authority. Late modifications in the past have  
19 required authority to construct, as opposed to  
20 simply the determination of compliance.

21 And so I'm just not sure whether or not  
22 we could say that an authority to construct would  
23 not be required.

24 MR. GALATI: Mr. Sadredin, we understand  
25 that in order to modify this facility from a

1       simple cycle to a combined cycle, we would have to  
2       come back through the Energy Commission process,  
3       which would trigger a new DOC.

4               As I understand, that DOC will serve as  
5       the authority to construct once the Commission  
6       acts. That's why we made the change. It wasn't  
7       that we don't come to you for an authority to  
8       construct, it's just to properly reflect the  
9       process as we understand it.

10              HEARING OFFICER FAY: Does that give you  
11       additional comfort, Mr. Sadredin?

12              MR. SADREDIN: Right. I just want to  
13       leave that open to make sure our -- I understand  
14       that it's -- it's, like I said, it's a minor issue  
15       that the DOC process is equivalent to an ATC  
16       process anyway in terms of the substance of the  
17       requirements that would have to be established.

18              Just as a procedural item I'd like to  
19       reserve our comment on that, whether we could  
20       concede that an ATC would not be required.

21              HEARING OFFICER FAY: And this is, the  
22       modification that's referred to is a major  
23       modification that I've anticipated in AB-970 that  
24       if it did occur, would occur after the, in this  
25       case, two-year life of this simple cycle project.

1                   So, this is not a minor modification  
2           like you may have seen in prior cases, but really  
3           a whole new project.

4                   MR. SADREDIN: Right, I understand.

5                   MR. GALATI: And, Mr. Sadredin, if we  
6           were to add the words, or an authority to  
7           construct, after the words, determination of  
8           compliance, that way we would be covered whichever  
9           document we needed. Would that satisfy the  
10          concerns?

11                  MR. SADREDIN: Yes, it would.

12          BY MR. GALATI:

13                 Q     Mr. Stein, do you agree to that, to  
14           changing the third sentence in AQ-41 to now read:  
15           The equipment shall not be operated beyond  
16           December 31, 2002, unless the permittee has filed  
17           an application for a determination of compliance  
18           or authority to construct, and an application for  
19           certification or amendment to the existing  
20           conditions of certification for a modification of  
21           the project to a combined cycle or cogeneration  
22           project?

23                         Do you agree to that change?

24                 A     Yes, I do.

25                   MR. GALATI: Mr. Sadredin, does that



1 change remove any objection to AQ-41?

2 MR. SADREDIN: Hello?

3 MR. GALATI: I'm sorry, Mr. Sadredin,  
4 did that change remove any objection you may have  
5 to AQ-41?

6 MR. SADREDIN: Right. There are a  
7 couple of incomplete sentences and so forth, I  
8 believe, in there, if I'm reading it correctly.  
9 But otherwise it looks okay.

10 MR. GALATI: Okay. I believe that  
11 concludes our direct testimony.

12 HEARING OFFICER FAY: All right, thank  
13 you, Mr. Galati. Does the staff wish to cross-  
14 examine Mr. Stein?

15 MS. HOLMES: No.

16 HEARING OFFICER FAY: Are there any  
17 follow-up questions from either CARB or the  
18 District of Mr. Stein regarding any of these  
19 changes?

20 MR. MENNEBROKER: This is Ray  
21 Mennebroker. We have none.

22 MR. SADREDIN: This is just a  
23 clarification that these changes that we've agreed  
24 to need for be formally conveyed to us in the form  
25 of an amendment to the proposal, which I believe

1 the applicant is working on right now.

2 But to incorporate these into the permit  
3 since some of them are voluntary measures that  
4 they've agreed to do, we need that to come  
5 officially from them in the form of an amendment  
6 to their application.

7 MR. GALATI: Mr. Sadredin, we'll be  
8 filing our comments on the DOC requesting these  
9 changes.

10 MR. SADREDIN: That's fine.

11 MR. GALATI: Thank you. Mr. Fay, could  
12 I please move into evidence exhibits 119, 120,  
13 121, 122, 123, 124 --

14 MR. MENNEBROKER: This is Ray  
15 Mennebroker. I have to leave now. Is there  
16 anything else?

17 HEARING OFFICER FAY: Mr. Mennebroker,  
18 hold on just a moment. Do the parties have any  
19 questions of Mr. Mennebroker before he leaves?

20 MS. HOLMES: No.

21 HEARING OFFICER FAY: All right, thank  
22 you very much for your comments and assistance,  
23 Mr. Mennebroker.

24 MR. MENNEBROKER: Thank you.

25 MR. SADREDIN: That same question for

1 me. Am I needed any longer?

2 HEARING OFFICER FAY: Any questions of  
3 Mr. Sadredin?

4 MS. HOLMES: Staff has none.

5 MR. GALATI: No more questions.

6 HEARING OFFICER FAY: All right. No,  
7 and thank you very much, Mr. Sadredin, for your  
8 comments.

9 MR. SADREDIN: All right, thank you.  
10 Bye bye.

11 HEARING OFFICER FAY: All right, Mr.  
12 Galati.

13 MR. GALATI: Exhibits 119 through 124,  
14 and the portion of exhibit 109 that reflects the  
15 testimony and declaration of David A. Stein, we'd  
16 like to move those into evidence at this time.

17 HEARING OFFICER FAY: Any objection?  
18 All right, so moved.

19 MR. GALATI: I'd also like to, just  
20 because that concludes our direct testimony, can I  
21 move in exhibit 107, which is the amended AFC?

22 HEARING OFFICER FAY: Any objection to  
23 that? All right, that is received into evidence.  
24 Am I correct in assuming staff will sponsor  
25 exhibit 125?

1 MS. HOLMES: That's correct.

2 HEARING OFFICER FAY: Okay, let's move  
3 to the staff.

4 MS. HOLMES: Staff's witness on air  
5 quality is Bob Haussler. He has not testified  
6 previously and needs to be sworn.

7 HEARING OFFICER FAY: Would you please  
8 swear the witness.

9 Whereupon,

10 ROBERT HAUSSLER  
11 was called as a witness herein and after first  
12 being duly sworn, was examined and testified as  
13 follows:

14 DIRECT EXAMINATION

15 BY MS. HOLMES:

16 Q Mr. Haussler, could you please describe  
17 what your professional responsibilities are at the  
18 Energy Commission?

19 A I'm assigned as the Office Manager over  
20 the Environmental Protection Office, the air  
21 quality analyses is done in that office.

22 Q So in fulfilling your professional  
23 responsibilities did you review the staff's air  
24 quality testimony that's contained in exhibit 108?

25 A That's correct.

1           Q     And is that portion of the testimony  
2     contained in exhibit 108 and exhibit 125 prepared  
3     under your direction?

4           A     Yes, it is.

5           Q     And is the testimony valid and accurate  
6     to the best of your knowledge?

7           A     Yes, it is.

8           MS. HOLMES: I don't think we need to  
9     ask for any summaries because I think unless the  
10    Committee has any concerns about that, so with  
11    that I'll just make Mr. Haussler available for  
12    cross-examination.

13           HEARING OFFICER FAY: All right. Any  
14    questions of Mr. Haussler?

15           MR. GALATI: Yes, I have a question for  
16    Mr. Haussler.

17                   CROSS-EXAMINATION

18    BY MR. GALATI:

19           Q     Mr. Haussler, did you understand the  
20    modifications that were made to AQ-41 and AQ-42 as  
21    a result of Mr. Sadredin's comments?

22           A     Yes, I did.

23           Q     And does staff, do you agree with those  
24    modifications?

25           A     Yes, we do.

1           Q     The earlier air quality testimony which  
2     proposed an alternative way to deal with the 9 ppm  
3     for one year and possibility of 5 ppm for the  
4     second year, are you familiar with that testimony?

5           A     I am.

6           Q     And with the adoption of these  
7     conditions is that testimony withdrawn?

8           A     That's correct.

9           MR. GALATI:   Thank you, I have no  
10    further questions.

11          HEARING OFFICER FAY:   All right.   Does  
12    anybody else have questions of Mr. Haussler?  
13    Okay.   Thank you, Mr. Haussler, you're excused.

14          MR. HAUSSLER:   Thank you.

15          HEARING OFFICER FAY:   Are there any  
16    other matters that the parties wish to address at  
17    this time?   According to my notes that covers all  
18    the subjects that we've addressed.

19          MS. HOLMES:   I'd just like to, to the  
20    extent that I didn't do so earlier, move that  
21    those portions of staff testimony that were  
22    sponsored today be moved into evidence.

23          HEARING OFFICER FAY:   Okay, is there any  
24    objection?

25          MR. GALATI:   No objection.

1                   HEARING OFFICER FAY: All right. So all  
2 staff's testimony, should we have missed any, is  
3 now moved into evidence.

4                   And Mr. Haussler has sponsored Mr.  
5 Loyer's testimony, I understand?

6                   MR. HAUSSLER: That's correct.

7                   HEARING OFFICER FAY: And Mr. Kisabuli's  
8 declaration?

9                   MS. HOLMES: Will be signed and  
10 submitted. We'll docket it tomorrow and  
11 distribute it to the parties.

12                  HEARING OFFICER FAY: Okay, thank you.  
13 Any other matters before we close today's record?

14                  Now, I want to note that the evidentiary  
15 record will remain open to receive the final DOC.  
16 Is there any other reason that it should remain  
17 open, because I'd like to leave that window as  
18 small as possible, narrow as possible, yes.

19                  MR. GALATI: I don't believe there's any  
20 other reason that it should be left open.

21                  (Pause.)

22                  MS. HOLMES: Would the Committee be  
23 interested in also leaving the record open in  
24 order to receive confirmation that the sale has  
25 been completed? I don't know what the timeline of

1       that is, and whether or not that will be -- if  
2       that's anticipated prior to the closing of the  
3       evidentiary record.

4               But since there were a number of issues,  
5       particularly ones involving the NOV's, that depend  
6       upon resolution of that issue, it might be wise to  
7       take evidence on that at the final hearing.

8               HEARING OFFICER FAY:  Yes, I think we'd  
9       like to do that.  Do you anticipate there would be  
10      evidence of the sale prior to licensing?

11              MR. GALATI:  No, we could provide a  
12      letter as soon as the sale was completed, and  
13      that's what we intend to do.

14              HEARING OFFICER FAY:  Right.

15              MR. GALATI:  So, we --

16              PRESIDING MEMBER MOORE:  In fact, I  
17      think you said that before.

18              MR. GALATI:  Yes.  So we could intend to  
19      do that.  Our project ownership testimony  
20      basically describes the deal and where it is.

21              HEARING OFFICER FAY:  I just don't  
22      recall.  Do you anticipate that will occur prior  
23      to December 6th?

24              MR. GALATI:  Yes.

25              HEARING OFFICER FAY:  Okay.



1                   MR. GALATI: We expect that after the  
2 middle of this month.

3                   HEARING OFFICER FAY: Yes. So, we will  
4 leave the record open to receive that, as well.  
5 So, only evidence of the ownership change and the  
6 final DOC from the District. Other than that, the  
7 evidentiary record is closed.

8                   Are there any other matters before we  
9 adjourn?

10                  MR. GALATI: No. Our only comments we'd  
11 like to extend our thanks to staff, specifically  
12 to Caryn Holmes, who is here with her -- and Jim  
13 Loyer, who has personal issues, and we understand  
14 very completely that they have sacrificed to be  
15 here and to make this hearing happen.

16                  And we'd like to extend our thanks there  
17 and to the Committee for holding this hearing  
18 quickly and fast and allowing us the opportunity  
19 of the workshop to resolve all the issues except  
20 for the verifications on biology.

21                  HEARING OFFICER FAY: Okay. And before  
22 we sign off, I anticipate that we will offer the  
23 parties an opportunity to comment perhaps as late  
24 as December 4th prior to the business meeting, on  
25 the revised PMPD, any last minute corrections, et

1       cetera, so that we don't have to take up the full  
2       Commission's time to do that.

3               So I think if it's all right with the  
4       Presiding Member, I'll just notice that now. It's  
5       December 4th --

6               PRESIDING MEMBER MOORE: Right, I think  
7       that's appropriate. And I should note for the  
8       record that there's been some discussion about  
9       whether or not my travel plans, because I have  
10      other commitments that might get in the way of  
11      dealing with this matter.

12              And that we have an opinion from counsel  
13      now that I can participate from afar if I am out  
14      of the Commission on the board meeting day. It  
15      will be my intention, should I be out of town, to  
16      phone in during the business meeting. We'll have  
17      a conference call set up at that time, and I'll  
18      participate in the entire hearing where everyone's  
19      on notice that I'm doing that.

20              And that will allow me to vote on the  
21      matter from wherever I am. So, everyone's  
22      apprised. Apparently this is -- didn't seem very  
23      novel to me when I asked, but apparently it was.  
24      And so the precedent is just about to be  
25      established for the Commission using this.

1                   HEARING OFFICER FAY: I'm informed that  
2                   the soonest a transcript would be available is  
3                   Monday, November 13th. And if anybody thinks it's  
4                   otherwise, they can check with our office later  
5                   and perhaps the court reporter service.

6                   This is not -- the court reporter here  
7                   today, Ms. Baker, has no control over that. So,  
8                   please don't bother her about that matter.

9                   Yes, Mr. Grattan.

10                  MR. GRATTAN: My understanding, my last  
11                  conversation was with Barbara Peters of the  
12                  reporting service, and she informed us if we could  
13                  keep the hearing between three and four hours,  
14                  which we have, that it could be ready in two days,  
15                  i.e., on the 9th. Has she spoken with you  
16                  subsequent to her conversation --

17                  HEARING OFFICER FAY: No. This is just  
18                  from staff in my office that I think is familiar  
19                  with the general arrangement of things. If you  
20                  have something specific from the reporting  
21                  service, and can make it happen, so much the  
22                  better. Obviously it helps us the sooner we have  
23                  the record and the parties' submittals.

24                  When does the applicant anticipate  
25                  filing a brief, if you plan to?

1                   MR. GALATI: We would anticipate filing  
2                   a brief, assuming we can get the transcript on the  
3                   9th, we'll file it on the 13th, on Monday.

4                   HEARING OFFICER FAY: Okay. Well, let  
5                   me give the other parties an opportunity, and I  
6                   don't think we need to order anything like that,  
7                   but to the extent that there remains disputed  
8                   topics, for instance on biological resources,  
9                   parties may avail themselves of filing a brief by  
10                  the 13th.

11                  And the Committee will strive mightily  
12                  to issue a revised PMPD by November 20th.

13                  MR. GRATTAN: And we will strive  
14                  mightily, we'll talk to Barbara Peters again and  
15                  make sure that a transcript can be delivered here  
16                  on the 9th.

17                  HEARING OFFICER FAY: Okay.

18                  MR. GRATTAN: If it were the 10th, which  
19                  is a state holiday, is there a way that we can  
20                  arrange for it to be delivered on the 10th, and  
21                  then --

22                  HEARING OFFICER FAY: Yes.

23                  MR. GRATTAN: -- emailed appropriately?

24                  HEARING OFFICER FAY: Yes. See me  
25                  afterwards and we'll arrange that.

1 MR. GRATTAN: Okay.

2 HEARING OFFICER FAY: Okay. Any last  
3 comments?

4 MR. GALATI: The December 4th revised  
5 PMPD conference hearing, did you set a time for  
6 that, or will you send a notice?

7 HEARING OFFICER FAY: Why don't we say  
8 10:00 a.m.

9 Okay, anything further? All right,  
10 thank you all, we're adjourned.

11 (Whereupon, at 3:40 p.m., the hearing  
12 was adjourned.)

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## CERTIFICATE OF REPORTER

I, DEBI BAKER, an Electronic Reporter,  
do hereby certify that I am a disinterested person  
herein; that I recorded the foregoing California  
Energy Commission Hearing; that it was thereafter  
transcribed into typewriting.

I further certify that I am not of  
counsel or attorney for any of the parties to said  
Hearing, nor in any way interested in the outcome  
of said Hearing.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 8th day of November, 2000.

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